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Pepperdine University  
Graduate School of Education and Psychology

THE DEVELOPMENT OF A STANDARD OF CARE FOR COMPETENCY TO  
STAND TRIAL EVALUATIONS

A clinical dissertation submitted in partial satisfaction  
of the requirement for the degree of  
Doctor of Psychology

by

Alexis Bowles

August, 2012

Robert deMayo, Ph.D., ABPP- Dissertation Chairperson

This clinical dissertation, written by

Alexis Bowles

under the guidance of a Faculty Committee and approved by its members, has been submitted to and accepted by the Graduate Faculty in partial fulfillment of the requirements for the degree of

DOCTOR OF PSYCHOLOGY

Doctoral Committee:

Robert deMayo, Ph.D., ABPP, Chairperson

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## ALEXIS BOWLES

### EDUCATION

Pepperdine University, Los Angeles, CA Expected 8/2012  
 Doctoral Degree, Clinical Psychology

- Dissertation Defended 7/2012
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 Chairperson: Robert deMayo, Ph.D., ABPP

New York University, New York, NY 5/2008  
 Master of Arts, General Psychology

- Thesis Title: The Utility of the PCL-R and Impulsivity Measures as Predictors of Postdischarge Behavior in Patients with Persistent Mental Illness and a History of Violent Crime  
 Supervisor: Kathy Yates, Ph.D.

University of Colorado, Boulder, CO 8/2004  
 Bachelor of Arts, Psychology and Sociology

### CLINICAL TRAINING EXPERIENCE

Federal Bureau of Prisons, Federal Medical Center Devens, Ayer, CA 8/2011- Present  
*Pre-doctoral Psychology Intern- Supervised by Diana Schoeller, Psy.D.*

- Conducted individual cognitive-behavioral psychotherapy with inmates. Provided weekly supervision to a practicum student. Documented treatment and assessment using BEMR and PDS. Administered and interpreted psychological assessments measures and prepared written psychological evaluations. Received training in scoring of the STATIC-99, an actuarial risk assessment tool used to help predict risk of sexual recidivism. Completed Receiving and Discharge Screenings and Intake Screenings, including assessment of adjustment to incarceration, treatment needs, and suicidality. Completed Suicide Risk Assessments and provided follow-up care, including Suicide Watch contacts. Participated in a weekly didactic series on correctional psychology. Developed and conducted a Mental Health Care Level 2 group and completed Care Level 2 contacts. Provided consultation to other mental health provider, medical staff, and correctional staff with regards to inmate care. Evaluated internship applications and received training in personnel selection.

Sex Offender Treatment and Management Rotation  
*Supervised by Bruce Loding, Ph.D.*



- Co-facilitated Sex Offender Treatment Program psychoeducation and process groups. Conducted sex offender intake assessments. Prepared sex offender discharge summaries, outlining course of care and management, risk, recommendations for treatment, and restrictions. Conducted cell searches to monitor inmate possession of contraband. Assessed inmates for risk of sexual recidivism using the STATIC-99. Interpreted personality measures, cognitive measures, and sexual interest inventories to measure readiness for treatment and sexual deviance. Provided psychotherapy to sexual offenders with regard to management of sexual behaviors and monitoring mental health.

#### Forensic Rotation

*Supervised by Shawn Channell, Ph.D.*

- Completed psychosocial interviews, record reviews, personality and cognitive assessment. Completed competency evaluations and risk assessment evaluations. Prepared reports for the Risk Assessment Panel.

#### Drug Abuse Treatment Rotation

*Supervised by Susan Bates, Ph.D.*

- Completed intake interviews with Non-residential Drug Abuse Program participants. Co-facilitated Drug Education and Non-residential Drug Abuse Program groups.

#### Mental Health Rotation

*Supervised by Lindsay Olden, Ph.D.*

- Developed and facilitated a Criminal Thinking Errors group and a Bibliotherapy group with mental health-designated inmates. Completed clinical contacts and managed mental health inmates. Administered and interpreted psychological assessment measures and prepared written psychological evaluations.

CA Department of Corrections and Rehabilitation Division of Juvenile Justice  
Norwalk, CA

Southern Youth Correctional Reception Center and Clinic

9/2010- 7/2011

*Extern- Supervised by Kelli Colbert, Ph.D., Shawn Jones, Ph.D., and Regina Uliana, Ph.D.*

- Conducted individual psychotherapy with incarcerated adolescent and young adult male sex offenders participating in the Sex Behavior Treatment Program, an intensive, therapeutic program. Utilized Cognitive-Behavior Therapy, Relapse Prevention, and Motivational Interviewing techniques. Co-facilitated weekly psychotherapy groups focused on healthy living and relapse prevention. Completed psychological and cognitive evaluations. Administered and scored

assessment tools for sex offenders, including the JSOAP-II, JSORRAT-II, Multiphasic Sex Inventory, and Static-99. Attended Board of Parole hearings.

University of California Los Angeles Medical Center, Los Angeles, CA

Semel Institute for Neuroscience and Human Behavior

8/2010- 6/2011

*Psychology Extern- Supervised by Po Lu, Psy.D. and Karen Miller, Ph.D.*

- Conducted comprehensive neuropsychological evaluations with adult male and female medical patients. Patients presented with various medical, psychiatric, and neurological conditions or diseases. Completed semi-structured clinical interviews, administered and scored a comprehensive neuropsychological assessment battery, interpreted findings, and prepared written reports. Attended weekly neuropsychological assessment didactics and participated in case presentations.

VA West Los Angeles Healthcare Center, Los Angeles, CA

Outpatient Mental Health Clinic

1/2010-5/2010

*Pre-Intern- Supervised by Sara Jarvis, Ph.D.*

- Conducted individual psychotherapy using Cognitive-Behavior Therapy, Relapse Prevention, and Acceptance and Commitment Therapy models with veterans presenting with a variety of Axis I and Axis II disorders (e.g., mood, cognitive, psychotic, substance-related, and personality). Co-facilitated group sessions focused on social skills. Conducted comprehensive psychological evaluations; integrating personality, intelligence, and neuropsychological measures. Performed clinical interviews, administered and scored measures, interpreted findings, and prepared written reports. Provided feedback to the patients. Received training on the interpretation of personality and projective measures, including the MMPI-2, MCMI-III, Rorschach, and TAT. Attended grand rounds, case conferences, and didactics.

Neuropsychology Assessment Lab

9/2009-1/2011

*Pre-Intern- Supervised by Charles Hinkin, Ph.D.*

- Conducted comprehensive neuropsychological evaluations for a variety of diagnostic groups and referral questions (e.g., traumatic brain injury, stroke, neurodegenerative diseases, substance abuse, psychiatric disorders, and medical conditions). Received training on differential diagnosis, the development of flexible test batteries, and the interpretation of intelligence, neuropsychological, and personality measures. Administered and scored personality and neuropsychological measures, interpreted findings, and prepared

written reports. Co-facilitated feedback sessions with the patients. Attended grand rounds, case conferences, and didactics.

Union Rescue Mission Homeless Shelter, Los Angeles, CA 9/2008- 9/2010

Pepperdine University Mental Health Clinic

*Practicum Therapist- Supervised by Aaron Aviera, Ph.D. and Stephan Strack, Ph.D.*

- Provided individual psychotherapy to homeless adult men and women enrolled in a residential rehabilitation program in the Downtown Los Angeles Skid Row area. Therapy modalities included Cognitive-Behavior Therapy, Relapse Prevention, and Motivational Interviewing. Clients presented with a variety of severe Axis I and Axis II disorders (e.g., mood, cognitive, psychotic, substance-related, and personality), socioeconomic stressors, and trauma histories. Conducted intake interviews, performed psychological assessments, and implemented treatment plans. Attended a weekly seminar on personality and cognitive assessment to assist in differential diagnosis, treatment planning, and implementation.

Lamp Community Center, Los Angeles, CA

1/2009-5/2009

Pepperdine University Community Counseling Services

*Practicum Therapist- Supervised by Aaron Aviera, Ph.D.*

- Co-facilitated a weekly psychotherapy group for homeless men and women with chronic mental illness living in the Downtown Los Angeles Skid Row area. Group participants included individuals dealing with severe Axis I and Axis II disorders, major medical problems, and socioeconomic stressors.

Manhattan Psychiatric Center, New York, NY

10/2006-7/2008

*Psychology Extern- Supervised by Florence Leone, Ph.D.*

- Provided individual psychotherapy to adult psychiatric inpatients with a history of violent criminal behavior and substance dependence. Applied the Cognitive-Behavior Therapy model to issues of relapse prevention, impulse control, anger management, interpersonal relationships, and medication management. Co-facilitated a weekly group focused on relapse prevention, interpersonal skills, and symptom management to promote reintegration into the community upon discharge from a state psychiatric facility. Attended grand rounds, didactics in conjunction with Kirby Forensic Center, and court proceedings.

Kathy F. Yates, Ph.D., New York, NY

10/2007-6/2008

Forensic Evaluation Services

*Psychology Assistant- Supervised by Kathy Yates, Ph.D.*

- Assisted with forensic evaluations, including risk assessment, competency to stand trial, malingering, and mental state at the time of offense. Reviewed records and prepared written reports on clients' psychological, medical, and legal histories. Observed clinical interviews and forensic evaluations. Assisted in meetings with law enforcement, legal counsel, and mental health professionals.

Boulder County Mental Health, Boulder, CO 9/2003-5/2004

Cedar House Residential Treatment Facility

*Mental Health Aide*

- Facilitated weekly group therapy for severely mentally ill clients diagnosed with major mood, psychotic, substance-related, and personality disorders. Addressed daily living issues and problem solving skills for residents transitioning from long-term psychiatric hospitalization to a residential treatment program. Facilitated community-based life enrichment activities for patients with psychotic disorders.

Boulder County Department of Social Services, Boulder, CO 9/2003-5/2004

Family and Children Services

*Youth Services Case Aide*

- Facilitated a weekly group for justice-involved adolescents. Focused on issues including familial conflict, employment, teen parenting, and self-esteem. Served as a community resource liaison. Coordinated and monitored noncustodial parental visitations. Participated in inter-agency case planning. Mentored high-risk youth.

## SUPERVISORY EXPERIENCE

Pepperdine Psychological and Educational Clinic, Los Angeles, CA 9/2010- 7/2011

*Pre-doctoral Therapy Peer Supervisor- Supervised by Dr. Aaron Aviera, Ph.D.*

- Supervised the clinical work of two first-year doctoral students conducting psychotherapy at the Union Rescue Mission, a residential rehabilitation program on Skid Row. Reviewed progress notes and audio taped therapy sessions, edited intake reports, and provided guidance on differential diagnosis, case conceptualization, and therapeutic interventions. Attended weekly case conferences.

## RESEARCH EXPERIENCE

Pepperdine University, Los Angeles, CA 9/2008-08/2009

Urban Initiative

*Research Assistant- Supervised by Daryl Rowe, Ph.D.*

- Assisted with the evaluation of a program to prepare psychology and education graduate students training to work in diverse, urban settings.

Interviewed participants to assess the needs of students participating in the Urban Initiative. Collected, coded, and analyzed data. Attended trainings on mental health care in urban settings and research methodology.

Manhattan Psychiatric Center, Los Angeles, CA 10/2006-7/2008

Service for the Treatment and Abatement of Interpersonal Risk

*Research Assistant- Supervised by Kathy Yates, Ph.D.*

- Assisted with the evaluation of a cognitive-behavior treatment program for psychiatric inpatients with substance abuse, and a history of violent recidivism. Monitored patient behavior post-discharge and consulted with mental health professionals regarding patients' stability in regards to substance abuse, arrests, hospitalizations, etc. Collected, coded, and analyzed data. Performed literature reviews exploring psychological assessment and treatment with mentally ill offenders and inpatient cognitive-behavior treatment implementation.

University of Colorado, Boulder, CO

9/2004-6/2006

Institute for Behavioral Genetics

*Professional Research Assistant- Supervised by John Hewitt, Ph.D.*

- Investigated the varying genetic and developmental influences on antisocial behavior and substance abuse. Received training on the utilization of personality and cognitive assessment measures for research purposes and longitudinal study methodology. Completed structured clinical interviews and administered a comprehensive 8-hour assessment battery comprised of cognitive, personality, and neuropsychological assessment measures. Adolescent and adult participants included twin pairs and families with an intergenerational history of antisocial behavior and substance abuse. Scored and coded data for analysis.

Partnership for Active Community Engagement

5/2003-5/2004

*Research Assistant- Supervised by Louise Silvern, Ph.D.*

- Assisted with the evaluation of a residential cognitive-behavior treatment program for criminal offenders with persistent mental illness. Participated in the creation of a record review protocol and created a coding system to establish inter-judge reliability. Completed record reviews to identify protective and risk factors associated with successful treatment outcome. Collected, coded, and analyzed data. Wrote program evaluation reports presented to the Boulder Criminal Justice Board.

## POSTERS & PRESENTATIONS

Yates, K., Kunz, M., & Bowles, A. (2007, September). *The relevance of impulsivity in stair completers: Preliminary trends in a longitudinal follow up*. Poster session presented at the 5<sup>th</sup> Annual Psychiatric Research Day, NYU School of Medicine, New York, NY.

Kountz, T., Bowles, A., & Yates, K. (2006, April). *Differentiating factors and recidivism of mentally ill sex offenders*. Poster session presented at the NYU Masters of the Arts Research Conference, New York, NY.

Silvern, L., Bowles, A., Richards, J., Poncelow, J., & Richardson, G. (2006). *Pace evaluation study: Final report*. Boulder, CO: Boulder County Criminal Justice Board.

Silvern, L., Bowles, A., Richards, J., Poncelow, J., & Richardson, G. (2006). *Pace evaluation study: Progress report 2*. Boulder, CO: Boulder County Criminal Justice Board.

## TEACHING EXPERIENCE

Pepperdine University, Los Angeles, CA  
Fall 2010

Cognitive Assessment

Teacher's Assistant- Supervised by Carolyn Keatinge, Ph.D.

- Conducted WISC-III and WAIS-IV assessment labs with students and provided feedback on administration and scoring. Double-checked scoring of cognitive assessment measures.

Pepperdine University, Los Angeles, CA  
Spring 2010

Personality Assessment

Teacher's Assistant- Supervised by Carolyn Keatinge, Ph.D.

- Conducted Rorschach and TAT assessment labs with students and provided feedback on administration and scoring. Double-checked scoring of various personality and projective assessment measures.

Pepperdine University, Los Angeles, CA  
Fall 2009

Cognitive Assessment

Teacher's Assistant- Supervised by Carolyn Keatinge, Ph.D.

- Conducted WISC-III and WAIS-IV assessment labs with students and provided feedback on administration and scoring. Double-checked scoring of cognitive assessment measures.

Pepperdine University, Los Angeles, CA

Fall 2009

Intake and Interviewing

Teacher's Assistant- Supervised by Carolyn Keatinge, Ph.D.

- Assisted with students' understanding of clinical intake, diagnostic formulation, and case conceptualization.

New York University, New York, NY

Spring 2008

Introduction to Psychology

Teacher's Assistant- Supervised by Elizabeth Phelps, Ph.D.

- Created exam answer keys, graded exams, and conducted review sessions.

University of Colorado, Boulder, CO

Spring 2003

Deviance in Society

Teacher's Assistant- Supervised by Patti Adler, Ph.D.

- Co-facilitated student recitations, created answer keys, and graded exams.

## UNIVERSITY SERVICE

Pepperdine University Student Government Association

9/2010- 6/2011

Steering Committee Representative

- Advocated for the student body by dispersing information to students and faculty related to issues of policy and updates regarding the psychology department. Communicated and addressed students' feedback regarding the clinical psychology doctoral program. Member of a clinical competency sub-committee exploring and addressing issues related to the clinical competency exam.

Pepperdine University Writing Support Center

3/2009- 7/2011

APA Format Reviewer

- Reviewed students' dissertations and provided feedback to ensure adherence to APA guidelines and format requirements.

## PROFESSIONAL DEVELOPMENT

Correctional Psychology Didactic Series

08/2012- Present

Bureau of Prisons, Federal Medical Center Devens, various presenters

- Weekly didactic series covering a variety of topics related to correctional psychology, forensic psychology, and sexual offender management and treatment

Clinical Supervision Seminar

5/2010

VA West Los Angeles Healthcare Center, Carol Falender, Ph.D.

- One-day training on the supervisory relationship, strategies to enhance the experience, and the resolution of dilemmas.

Administration & Interpretation of Personality Assessment 9/2008-8/2009  
 Union Rescue Mission, Stephen Strack, Ph.D.

- Weekly seminar series focused on administration and interpretation of the MCMI-III and MMPI-2 with help-seeking homeless adults.

Urban Initiative Training Series 9/2008-8/2009

Pepperdine University, Daryl Rowe, Ph.D.

- Monthly training series focused on the provision of mental health services in urban, diverse treatment settings.

In-service Training Series 09/2008- 08/2009

Union Rescue Mission, various presenters

- Providing Psychological Services to Homeless Persons Who Are HIV Positive
- Providing Psychological Services to Homeless Persons who are Hispanic/Latino
- Addressing Religious and Spiritual Issues in Therapy
- Drugs and Drug Abuse in Los Angeles' Skid Row Community: Part I
- Drugs and Drug Abuse in Los Angeles' Skid Row Community: Part II
- Motivational Interviewing in Multicultural Settings
- Providing Psychological Services to Homeless Persons Who Are African America

## HONORS AND AWARDS

Evelyn B. Blake Endowed Scholarship, Pepperdine University	2008-2011
Colleagues Grant, Pepperdine University	2008-2011
Conrad N. Hilton Foundation Fellowship	2008-2009
Union Rescue Mission	2008-2009
Urban Initiative Fellowship, Pepperdine University	2008-2009
Master of the Arts Scholar, New York University	2005-2008
Dean's List, University of Colorado	2000-2004

## PROFESSIONAL AFFILIATIONS

American Psychological Association, *Student Affiliate*  
 American Psychology-Law Society, *Student Affiliate*  
 Los Angeles County Psychological Association, *Student Affiliate*  
 National Society of Collegiate Scholars  
 Psi Chi National Honors Society in Psychology



## ABSTRACT

Competency evaluations are the most widely completed forensic evaluation and concerns have been raised regarding inconsistency in the quality of forensic evaluations (Bow & Quinnell, 2001; Horvath, Logan, & Walker, 2002; Otto & Heilbrun, 2002). Currently, there is no enforceable standard of care in forensic psychological assessment (Heilbrun, DeMatteo, Marczyk, & Goldstein 2008). The research objective was to examine practice procedures and explore the development of a standard of care for competency evaluations. The study aimed to answer 2 research questions: (a) What are the current recommended practice procedures for psychologists conducting competency evaluations? (b) What would a standard of care for competency evaluations entail? A 2-pronged phenomenological approach was employed, consisting of a critical review of competency evaluation practice procedures and qualitative, semi-structured interviews with 6 clinical psychologists who complete forensic evaluations. The interview findings are presented under the following domains that have been identified for a proposed standard of care for forensic psychological evaluations (Conroy, 2006; Goldstein, 2007): (a) ethical conduct, (b) necessary knowledge of the legal system, (c) use of appropriate methodology, (d) inclusion of information from a variety of data sources, (e) awareness of relevant empirical research, (f) proper preparation and presentation of findings to the legal system, and (g) adherence to an expected threshold of quality. The results of the comprehensive literature review and interview findings are discussed, as well as the limitation of the study and suggestions for future research.

## Introduction

### Background of the Problem

Forensic evaluation, particularly competency evaluation, is an important topic to examine because competence to proceed is the “most significant mental health inquiry pursued in the system of criminal law” (Stone, 1975, p. 200, as cited in Otto, 2006). Authors state the “determination of incompetence represents one of the most profound infringements of a citizen’s rights,” (Grisso & Appelbaum, 1998, p. 15) as legal revocation of competency may result in loss of basic freedoms. The most widely used current standard regarding competency in the United States was established in *Dusky v. United States* (1960). The Supreme Court held:

It is not enough for the district judge to find that 'the defendant is oriented to time and place and has some recollection of events', but that the test must be whether he has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding and whether he has a rational as well as factual understanding of the proceedings against him. (p. 402)

Approximately 20-30% of defendants assessed for competency are found incompetent to proceed (Otto, 2006). Concerns have been repeatedly raised over the inconsistency in the quality of forensic psychological assessment practice (Bow & Quinnell, 2001; Horvath, Logan, & Walker, 2002; Otto & Heilbrun, 2002). This inconsistency is partially due to the fact that limited regulations on forensic psychological assessment make it difficult to determine what constitutes the minimally satisfactory practice/professional standard of care. Currently, there is no enforceable standard of care in forensic psychological assessment (Heilbrun, DeMatteo, Marczyk, & Goldstein 2008). Liability is often a means to ensure proper

practice adherence, and there is little liability in forensic psychological assessment under current law (Greenberg, Shuman, Feldman, Middleton, & Ewing, 2007; Melton et al., 2007). Recently, significant improvements in forensic psychological assessment have been made in the areas of violence and sexual risk assessment, suggesting that additional attention is needed to the area of competency evaluation (Quinsey, Harris, Rice, & Cormier, 2006). At this time, methods and contributions of nonviolent forensic psychological assessment in practice have not been systematically examined across states and jurisdictions (Fox & Huddleston, 2003; Wilhelm & Turner, 2002). Fitch (2007) discussed the importance of practice guidelines for competency to stand trial from a legal perspective. The author concluded guidelines must be more carefully organized, include a highly detailed table of contents, adequately integrate relevant case law, and include specific protocols and case examples. The development of a standard of care for competency evaluation may allow for greater consistency and ensure higher quality.

### **Purpose of the Study**

The research objective is to examine the current recommended practice procedures for competency evaluations and to explore the development of a standard of care for competency evaluations. This will include a discussion of the various aspects that entail the creation of a standard of care, competency evaluation practice procedures, and the challenges of creating a standard of care for competency evaluations. A systematic literature review of the emerging standard of care for forensic evaluations and an analysis of the development of a standard of care in a

related psychology specialty (i.e., child custody evaluation) will be utilized to inform the development of a standard of care for competency evaluation. Child custody evaluation guidelines will be reviewed because a standard of care has been clearly defined for the specialty area. Additionally, psychologists will be interviewed to gather information about their practice procedures and their recommendations regarding competency evaluations. Results from this 2-pronged approach (literature review and interviews) will be integrated in an effort to provide an in-depth understanding of competency evaluation and the development of a standard of care for forensic psychological evaluations, specifically competency evaluations.

**Research questions.** The study aims to answer the following research questions:

1. What are the current recommended practice procedures for psychologists conducting competency evaluations?
2. What would a standard of care for competency evaluations entail?

### **Literature Review**

**Forensic psychological assessment.** Forensic psychological assessment is the measurement of a psychological construct that informs the decision making process in a legal context (Heilbrun, 1997). Forensic psychological assessment encompasses a variety of evaluations, including competency to preceed, competency to stand trial, competency to waive Miranda rights, parental custody, criminal responsibility, personal liberty, malingering, and capital punishment evaluations. In a landmark case, *Jenkins v. United States* (1962), a federal appellate court ruled that

psychologists with sufficient training and qualifications may offer expert testimony regarding mental illness. With regard to competency, the U.S. Supreme Court ruled that a defendant must possess “sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding... [and have a] rational as well as factual understanding of the proceedings against him...” in *Dusky v. United States* (1960). Forensic psychologists can assist the legal decision-making process by evaluating and describing the defendant’s ability to understand and participate in legal proceedings, identifying and describing mental disorders or impairments that may be responsible for deficits, and if a finding of incapacity is made, determining if the deficit can be treated to restore the capacity (Fitch, 2006). It is crucial to remember that competency evaluations are always context-dependent (Fitch, 2006). Different levels of competency are required to waive Miranda Rights, stand trial, and proceed *pro se* (waive the right of counsel). Additionally, the level of competency necessary is dependent on the complexity of the specific charges and case characteristics (Fitch, 2006). A common professional duty for forensic mental health evaluators is the provision of expert testimony.

***Expert testimony.*** As an expert witness, a psychologist’s responsibility is to provide “scientific, technical, or other specialized knowledge [that] will assist the trier of fact to understand the evidence or to determine a fact in issue” (West Publishing, 1990). Admissibility of evidence governs the psychological expert testimony that is allowed to be presented in the courtroom. For over 70 years, the most common standard of admissibility of scientific evidence has been the *Frye* rule

(*Frye v. United States*, 1923). The *Frye* rule requires a technique or procedure to have general acceptance in the particular field, but does not address the issue of scientific validity. The *Frye* rule is currently utilized in a number of jurisdictions. The U.S. Supreme Court set a more recent evidentiary standard for admissibility during the case of *Daubert v. Merrell Dow Pharmaceuticals* in 1993. During this case, it was ruled that the standard for admissibility of expert testimony in Federal courts was the Federal Rule of Evidence 702 (West Publishing, 1990). This rule established relevancy for expert testimony, terms to qualify as an expert, regulated the Participants an expert could provide testimony on, and provided specific factors to consider if the conclusion presented by the expert witness qualifies as scientific knowledge (Hom, 2003). A conclusion is considered scientific knowledge if it is deemed to be a product of scientific methodology derived from the scientific method (Medoff, 2003). Specific factors used by the court to evaluate specific methodology include the presence of empirical testing, known or potential error rates, subjected to peer review, and the level of acceptability in the relevant scientific community (Medoff, 2003). While Federal courts abide by the *Daubert* standard, states vary in their acceptance of a version of the *Daubert* standard or the *Frye* standard (Hom, 2003).

**Professional practice issues.** Professional practice in psychology and psychology specialties are regulated by a variety of governing bodies, including professional societies, state governments, and federal governments (Zonana, 2008). Professional practice guidelines, specialty guidelines, practice principles, licensing

board regulations, and ethical codes are provided by these organizations to inform a minimum standard of practice (Zonana, 2008). The standards of practice, statutes, case law, and the consensus of the professional community are then utilized to inform the legal standard of care (Cukrowicz, Wingate, Driscoll, & Joiner, 2004).

***Standard of practice.*** Standards of practice have been defined as “best practices” or the typical way of doing things in a particular field (Heilbrun et al., 2008). They are established within the field, either informally or formally, and adherence is often aspirational. Most importantly, the breach of a standard of practice may result in sanctions, but not civil liability (Heilbrun, et al., 2008). Heilbrun et al. (2008) suggest that the development of a more clearly defined standard of practice in forensic psychological assessment would be beneficial and could be utilized to inform the operationalization of a standard of care.

***Standard of care.*** The legal standard of care is defined as the “degree of care which a reasonably prudent person should exercise in the same or similar circumstances” (Cukrowicz et al., 2004, p. 90). A standard of care is the minimally acceptable standards of professional conduct in a context that is judicially determined by a court of law (Heilbrun et al., 2008). Adherence to the standard of care is mandatory and breach of this standard may result in professional liability, as it may be considered negligence (Heilbrun et al., 2008). As previously mentioned, a wide variety of contributing information is required to develop a standard of care, including statutes, case law, licensing board regulations, professional ethical codes, consensus of the professional community, and relevant specialty guidelines.

***Forensic psychological assessment specialty guidelines and principles.***

Forensic psychologists must first follow the professional practice guidelines established for clinical psychologists. However, forensic evaluations are unique from traditional clinical evaluations and a variety of additional legal and ethical issues are involved. Ethical issues specific to the forensic realm include clarification of roles, confidentiality, identification of the client, intended use and potential recipients of the opinion/evaluation rendered, and limitations of professional competence (Kalmbach & Lyons, 2006). Therefore, forensic psychologists must carefully balance adherence to the standards specific to clinical psychology, guidelines established for the forensic subspecialty, professional ethics codes, and the legal regulations regarding expert testimony.

Forensic psychological assessment specialty guidelines and principles have been created as means to instruct forensic psychological assessment practice and ensure thorough and accurate assessment. A set of specialized ethical guidelines was created for forensic psychological assessment (American Psychological Association Committee on Professional Practice and Standards, 1994; Committee on Ethical Guidelines for Forensic Psychologists, 1991; Committee on the Revision of the Specialty Guidelines for Forensic Psychology, 2011). Recognition of the inconsistency in the quality of forensic psychological assessment practice has highlighted the need for more stringent regulation and clarification of practice standards (Bow & Quinnell, 2001; Horvath, Logan, & Walker, 2002; Otto & Heilbrun, 2002). This is particularly important, given that forensic psychological



assessment has experienced an increased influence in legal contexts (Heilbrun, 1997). The Specialty Guidelines for Forensic Psychology are the only guidelines that address a complete specialty practice area that have been approved by the American Psychological Association (APA) and are noted to be “considerably broader in scope than any other APA-developed guidelines” established for other specialty areas (p. 3). The broad scope of the Guidelines provides further credence for the importance of addressing specific specialty areas within forensic psychology. The Specialty Guidelines for Forensic Psychology were recently updated in 2011. This update was particularly important considering the dynamic nature of forensic psychological assessment and there have been significant advancements in the practice of forensic psychology since the original specialty guidelines were published. The Guidelines are informed by the Ethical Principles of Psychologists and Code of Conduct published by the American Psychological Association (APA, 2002). The Specialty Guidelines for Forensic Psychology explicitly state guidelines are recommendations and aspirational, and should not replace clinical judgment in each individual case, which differs significantly from the mandatory nature of standards. Of note, “The *Guidelines* are not intended to serve as a basis for disciplinary action or civil or criminal liability. The standard of care is established by a competent authority not by the guidelines” (p. 2). The *Guidelines* specifically address the potential utilization in the creation of standards:

In cases in which a competent authority references the *Guidelines* when formulating standards, the authority should consider that the *Guidelines* attempt to identify a high level of quality in forensic practice. Competent practice is defined as the conduct of a reasonably prudent forensic practitioner

engaged in similar activities in similar circumstances. Professional conduct evolves and may be viewed along a continuum of adequacy, and “minimally competent” and “best possible” are usually different points along that continuum. (pp. 2-3)

The *Guidelines* address the following areas: Responsibilities; Competence; Diligence; Relationships; Fees; Informed Consent, Notification and Assent; Conflicts in Practice; Privacy, Confidentiality, and Privilege; Methods and Procedures; Assessment; Professional and Other Public Communications.

**Standard of care in a psychology specialty.** In an effort to gain a greater understanding of the development of a standard of care for competency evaluations, it is helpful to review the creation of a standard of care for a related psychology specialty. Child custody hearings are notoriously adversarial and challenging legal cases, due to the high stakes of the rulings. Psychologists are often involved in providing opinions to the Court in child custody proceedings, including evaluations of parents, stepparents, other potential custodial figures, and the children. In addition, child custody evaluators are at a greater risk of facing potential lawsuits (Otto, Edens, & Barcus, 2000). Horvath et al. (2002) completed a content analysis of evaluation practices in child custody cases and suggested a more standardized approach to conducting custody evaluations is needed. Increased standardization was recommended, due to the high level of variability in the content and methods of the evaluations, as well as notable inconsistency between guidelines and clinical practice (Horvath et al., 2002). The American Academy of Child and Adolescent Psychiatry (AACAP), American Psychological Association (APA) Committee on Professional Practice Standards (1994), and the Association of Family and Conciliation Courts

(AFCC) (n.d.) established comprehensive guidelines for the completion of child custody evaluations. Horvath et al. (2002) suggested recommendations for child custody evaluations that can be applied to all forensic evaluations. These recommendations include adherence to the guidelines of appropriate professional organizations, utilization of aspirational guidelines if available, the use of reliable and valid standardized approaches to evaluation, inclusion of behavioral and psychological assessment instruments, multiple methods to gather information, adequate training for evaluators, and presentation of the findings to the Court. Due to the call for increased standardization to ensure consistency and accurate assessment in the best interests of the child, states have begun to adopt legally enforceable standards of care for child custody evaluations. The California Rules of Court Title 5 Family and Juvenile Rules (2011) offers a comprehensive list of legally enforceable rules that must be adhered to during the course of a child custody evaluation. These rules cover education, training, experience, scope of the evaluations, and the ethics of child custody evaluations (California Rules of Court Title 5 Family and Juvenile Rules, 2011). Additionally, the State of Massachusetts released a comprehensive set of standards for child custody evaluations in 2008 (APA, 2009). The development of standards of care for child custody evaluations is indicative of significant progress in the standardization of forensic mental health assessments. Increased standardization decreases variability in the quality of evaluations, streamlines administration of the evaluations for the psychologists, and increases the utility of the evaluations for the Court. In addition, standardization has been noted to be beneficial for the reputation

of the field of forensic psychological assessment and the value of forensic evaluations. Thus, the guidelines and standards for child custody evaluations will be utilized to inform the development of a standard of care for the forensic assessment specialty area of competency evaluations.

**Emerging forensic psychological assessment standard of care.** Goldstein (2007) has suggested a standard of care for forensic assessment is emerging. Goldstein recommended a standard of care for forensic psychological assessment should include: (a) ethical conduct, (b) necessary knowledge of the legal system, (c) use of appropriate methodology, (d) inclusion of information from a variety of data sources, (e) awareness of relevant empirical research, (f) proper preparation and presentation of findings to the legal system, and (g) adherence to an expected threshold of quality (Conroy, 2006; Goldstein, 2007). These same characteristics can be applied to the creation of a standard of care for competency evaluation, a specialized area of forensic psychological assessment. Kalmbach and Lyons (2006) assert that knowledge of legal standards and adherence to the forensic specialty guidelines and professional ethics codes can be utilized as evidence of a commitment to a standard of care if an expert witness's opinion is challenged in court.

**Competency evaluations.** As described above, competency evaluations comprise a significant portion of forensic psychological evaluations. However, there are currently no agreed upon clinical guidelines for assessing competency (Moberg, 2006). Otto (2006) described the three main tasks of the evaluator: (a) assess and describe the defendant's capacity to understand and participate in the legal

proceedings, (b) identify and describe any mental disorders and impairments, broadly defined, that may be responsible for impaired capacities that are noted and described, and (c) in that subset of cases in which a finding of incapacity may occur, identify if the mental disorder(s) or impairment(s) that are considered responsible for the observed and described deficits can be treated so as to restore the defendant's capacity (and identify those treatments).

Archer et al. (2006) completed a web-based survey of the most commonly used competency measures, as one legal criteria of a forensic evaluation is that the methods have general acceptance in the community. There were 152 respondents, all members of the American Psychology-Legal Society (AP-LS) Division of the APA and/or diplomats of the American Board of Forensic Psychologists (ABFP). Respondents were asked how often they used specific instruments on a 0-6 rating scale. The most commonly used competency or sanity measures, in order of regularity of use, were: (a) MacArthur Competence Assessment Tool, (b) Competence Assessment for Standing Trial for Defendants with Mental Retardation, (c) Evaluation of Competency to Stand Trial- Revised, (d) Grisso's Miranda Rights, (e) Rogers' Criminal Responsibility Assessment Scales, (f) MacCAT-Treatment, (g) Competency Screening Test, (h) Interdisciplinary Fitness Review Interview, and (i) Fitness Interview Test.

***Competency to stand trial.*** Most federal and state statutes are based on the standard set forth in *Dusky v. United States* (1960). Thus, competency evaluations typically address an individual's factual understanding of court proceedings, rational

understanding of the court proceedings, and ability to assist in their own defense with their attorney. An example of a measure utilized to assess competency is the Competence to Stand Trial Assessment Instrument (CAI), an instrument designed to structure the assessment of competency to stand trial (Otto, 2006). The CAI directs the examiner to assess the defendant's: (a) appraisal of available legal defenses, (b) behavior as it might affect participation in the trial or interactions with others, (c) ability to relate to and interact with his or her attorney, (d) ability to deliberate and consider legal strategies with his or her attorney, (e) understanding of the roles of the main actors in the process including defense counsel, the prosecutor, the judge, the jury, the defendant, and witnesses, (f) understanding of court procedure, (g) appreciation of the charges, (h) appreciation of the range and nature of possible penalties, (i) appraisal of likely case outcomes, (j) ability to disclose pertinent facts surrounding the offense including his or her behavior at and around the time of interest, (k) capacity to challenge adverse witnesses, (l) capacity to testify relevantly, and (m) motivation to act in his or her own best interests during the proceedings.

Skeem and Golding (1998) conducted an analysis of three fundamental problems with reports on competency to stand trial. They identified the following major problems with competency to stand trial reports: (a) failure to properly attending to the range of critical psycholegal abilities, including decisional capabilities, (b) lack of explanation of the critical reasoning that underlies the evaluator's psycholegal conclusions, and (c) failure to use forensically relevant methods of assessment. Skeem and Golding noted that there have been modest, but

significant improvement over past 2 decades in competency evaluations. They concluded that more comprehensive training is needed and they recommended a systematic review of report quality, possibly peer reviews, and increased use of instruments. Additional effort to address specific, psycholegal abilities (decisional versus foundational abilities, weighing the defendant's ability versus the demands of the case), and an increase in the use of psycholegal reasoning to support decisions was also recommended. Additionally, it is important to adequately assess for the exaggeration or feigning of symptoms when completing a forensic mental health assessment.

#### **Operationalization of a standard of care for competency evaluations.**

Moberg and Kniele (2006) highlight professional controversies in the area of competency evaluations include the use of variable criteria to establish impairment and the lack of guidelines for the administration of competency evaluations. Heilbrun et al. (2008) identified the necessary features of an operationalized forensic mental health assessment standard of care: (a) ethical conduct, (b) knowledge of the legal system and professional legal duties, (c) use of appropriate methodology, (d) information from a variety of data sources, (e) awareness of relevant empirical research, (f) preparation and presentation of findings to the legal system, (g) expected threshold for the quality. These features will be utilized to explore current practice procedures and discussion of a possible standard of care for competency evaluations.

*Challenges in the creation of a competency evaluations standard of care.* A number of challenges will be faced during the creation of a competency evaluation

standard of care. Particular challenges include the use of a fixed or flexible battery, 3<sup>rd</sup> party relationships, partisan allegiance, diversity considerations, special populations, guideline compliance rates, and the “ultimate issue” issue (Dvoskin & Guy, 2008; Kalmbach & Lyons, 2006; Slobogin, 1989). Testimony regarding the “ultimate issue” directly addresses the dispositive legal issue and is considered opinion testimony. The Insanity Defense Reform Act of 1984 excluded expert mental health testimony on the ultimate issue, specifically testimony addressing the expert’s opinion regarding whether or not the defendant is sane or insane (Slobogin, 1989). Debate continues regarding whether or not expert witnesses should provide testimony directly addressing the legal question, but most forensic psychologists are in agreement that clinicians should refrain from offering an opinion on the ultimate issue (Slobogin, 1989). The application of psychology to legal decision-making is also complicated by the differences between scientific and legal methodology (Hom, 2003). Psychology is based on the scientific method, which is an ongoing and collaborative effort to continually revise a working theory (Hom, 2003). The scientific method typically expresses findings with probability statements and qualifications. Conversely, the legal method is based on an adversarial approach that results in absolute and final decisions. It is also important to ensure that the evaluation is used only for its intended purposes and not to answer forensic questions, other than the questions specifically being addressed in the evaluation (Fitch, 2006).

***Fixed versus flexibly battery approach.*** Within forensic psychology, a controversy between the use of fixed and flexible test batteries exists. On one side,



psychologists argued that fixed test batteries are the only method to establish reliable and valid clinical judgments, and that a flexible battery cannot provide dependable evidence as a whole (Hom, 2003; Russell et al., 2005). When advocating for the use of a fixed battery approach, the Halstead-Reitan Battery (HRB) is commonly considered the gold standard (Bigler, 2008). However, the American Academy of Clinical Neuropsychology (AACN) supplied an Amicus Brief in support of the use of the flexible battery approach to psychological assessment for use in the courtroom. A New Hampshire Supreme Court decision was made on the use of fixed versus flexible psychological test batteries, and the NH Supreme Court ruled unanimously in favor of the use of the flexible battery approach (Baxter v. Temple, 2008).

***The presence of third parties.*** Shealy, Cramer, and Pirelli (2008) completed a mailed survey of forensic psychologists' attitudes and practices regarding third parties in an evaluation, as there has been tension between professional and ethical standards regarding third party presence. This was the first formal attempt to assess clinicians' attitudes, knowledge, and practice regarding this topic. A majority (58.8%) of the respondents believe the presence of a third party can negatively impact the integrity of an evaluation. Most (73.8%) have conducted evaluations in the presence of a third party. Interestingly, the more experience clinicians had with third parties, the more positively they viewed third party observers as not detracting from the equity or validity of the evaluation. The authors call for the creation of a professional standard and research on the effect of a third party presence. They suggest that in light of the absence of a professional standard and continued clinician disagreement, an evaluator

should not allow the presence of a third party unless state statutes require otherwise. In the case of *Toyota Motor Sales, U.S.A., Inc. v. California Superior Court* (2010), the California appellate court ruled that the presence of counsel during psychiatric and psychological evaluations is prohibited unless there is evidence of the necessity for the counsel to be present.

***Partisan allegiance.*** Partisan allegiance is another large concern in the realm of FMHA. Murrie, Boccaccini, Johnson, and Janke (2008) suggested that partisan allegiance in forensic evaluations may be evaluated by interrater (dis)agreement on Psychopathy Checklist-Revised (PCL-R) scores completed during sexually violent predator trials. No prior systematic research had examined agreement between PCL-R scores from independent clinicians retained by opposing sides in adversarial legal proceedings. In this study, twenty-three sexual offender civil commitment cases in which opposing sides scored the PCL-R independently were reviewed. The study revealed a strong interrater agreement for PCL-R. However, differences between scores in the direction that supported the retaining party were evident. According to the study, 60.9% of score differences greater than 2 SEM units were in the direction of adversarial allegiance. These findings raise concern about the reliability of the PCL-R in and suggest further investigation into the effect of an adversarial setting is needed. This study revealed that an adversarial pull is evident, even when scoring a structured and generally objective measure.

## **Method**

### **Design**

This is a qualitative study, utilizing a 2-pronged phenomenological approach, to provide an in-depth understanding of forensic psychological evaluations, specifically competency evaluations. A 2-pronged phenomenological approach was employed to develop a thorough understanding of the features of comprehensive competency evaluations and complete an in-depth preliminary study of experts in forensic psychology through semi-structured interviews. The 2-pronged approach consists of (a) critical review of current competency evaluation practice procedures and the development of a standard of care in a related psychology specialty (i.e., child custody evaluation), and (b) qualitative, semi-structured interviews to collect information from practitioners relating their experiences conducting competency evaluations, as well as their recommendations regarding the development of a standard of care. The researcher combined the results from both prongs to address the necessity and development of an enforceable standard of care for competency evaluations. A discussion of the findings, limitations of the current study, and recommendations for future research is included.

This study was completed along with another study to explore the development of standards of care in forensic psychological assessment. In an effort to address both the civil and criminal realms of forensic assessment, two smaller studies were completed in conjunction with each other. Both studies are interested in general issues related to the creation and development of standards of care in forensic

psychological assessment. However, each study is also focused on a specific type of forensic assessment. One study is focused on the development of a standard of care for competency evaluations and one study is focused on the creation of a standard of care for personal injury evaluations.

A total of six licensed psychologists who have completed competency and/or personal injury evaluations were recruited for participation in the joint studies. All research participants were included in both research studies because of their ability to answer questions related to forensic assessment and standards of care in forensic assessment. The same general questions were asked of all research participants, as this information is relevant to both studies. In addition, based on their experience, questions were asked to gather information concerning their recommendations and practice procedures regarding competency and/or personal injury evaluations. Responses to the specialty-specific questions may have been relevant to only one or both studies, based on their experience with either one or both types of evaluations. Either researcher could interview a research participant and all data collected was shared between the researchers.

### **Role of the Researchers**

The primary researcher is a 29-year old Caucasian female enrolled in a clinical psychology doctoral program, completing the current study for her dissertation. The researcher has experience working with a forensic population and intends to pursue a career specialized in forensic assessment. Previous research experience conducting semi-structured interviews, analyzing quantitative data, and

preparing manuscripts has been completed as a research assistant. The researcher had no previous experience with qualitative research studies. The researcher recognizes the influence of her own attitudes and biases regarding the study, the impact of being the “instrument”, and is aware that interactive methods of data collection can influence the data gathered and interpretation.

The research study is being completed in conjunction with Laura Troolines. Please refer to her dissertation “Standard of Care for Forensic Personal Injury Evaluations” for additional information.

### **Participants**

A total number of six participants were selected for participation in this study and the collaborative study being completed by Laura Troolines. We utilized the same semi-structured interview with all participants and both researchers shared the data. A national search for participants was completed using professional forensic psychology list serves, and professional and personal contacts. The researchers sought (a) diplomates of the American Academy of Forensic Psychology (AAFP) and/or psychologists with American Board of Professional Psychology (ABPP) certification in Forensic Psychology, and then (b) members of the American Psychological Association Division 41 (American Psychology–Law Society; AP–LS). Additional participants were obtained through professional and personal contacts of the researchers and we asked participants if they recommend a colleague to be contacted regarding possible participation in the study. For the purposes of the present study, an expert in forensic psychology will be defined as a doctoral-level, licensed

psychologist who considers forensic psychological assessment a significant portion of their practice or academic concentration. Potential participants were required to meet the following inclusion criteria: received a doctoral degree in psychology, licensed for at least two years, conducted a minimum of ten competency evaluations and/or five personal injury evaluations.

Participant 1 is a 35- 44-year-old male who has a Psy.D. in Clinical Psychology and is currently licensed in the state of New York. Participant 1 has completed approximately 200 competency evaluations and 10 personal injury evaluations in the following settings: criminal, civil, court-ordered, and private practice. Participant 2 is a 45- 54-year-old male who has a Ph.D. in Clinical Psychology and is currently licensed in the state of New York. Participant 2 has completed approximately 1,000 competency evaluations and over 100 personal injury evaluations in the following settings: criminal, civil, court-ordered, and private practice. Participant 3 is a 35- 44-year-old female who has a Ph.D. in Clinical Psychology and is currently licensed in the state of New York. Participant 3 has completed approximately 50 personal injury evaluations in the following settings: criminal, civil, court-ordered, and private practice. Participant 4 is a 55- 64-year-old female who has a Ph.D. in Clinical Psychology and is currently licensed in the state of New York. Participant 4 has completed approximately 200 personal injury evaluations in the following settings: criminal, civil, court-ordered, and private practice. Participant 5 is a 35- 44-year-old female who has a Ph.D. in Clinical Psychology and is currently licensed in the state of Illinois. Participant 5 has

completed approximately 30 competency evaluations in the following settings: criminal, court-ordered, and private practice. Participant 6 is a 35- 44-year-old female who has a Psy.D. in Clinical Psychology and is currently licensed in the state of Massachusetts. Participant 6 has completed several hundred competency evaluations in the following settings: criminal and court-ordered. In summary, two of the participants are male and four of the participants are female. Four of the participants are in the 35- 44-year old age range, one participant is in the 45- 54-year-old age range, and one participant is in the 55- 64-year-old age range. Two of the participants have their Psy.D. in Clinical Psychology and four of the participants have their Ph.D. in Clinical Psychology. The number of competency evaluations completed by the participants varied between thirty and over one thousand. The number of personal injury evaluations completed varied between ten and over two hundred.

### **Instruments**

Prong 1: Literature Review Search Strategy

Key words: competency, competency evaluations, forensic psychological assessment, forensic evaluations, forensic specialty guidelines, and standard of care

Databases: Academic Search Elite, Dissertations & Theses, EBSCOhost, ERIC, Lexis Nexis Academic, PsycARTICLES, PsycINFO

Prong 2: Semi-structured Interviews (see Appendix D)

### **Procedure**

The researcher received the approval of Pepperdine University's Institutional Review Board (IRB) after submitting the proposal for consideration and review.

To answer the first research question, a systematic integrative review of quantitative research and a thematic review of qualitative literature was completed in an effort to (a) review the current recommended practice procedures for forensic psychological competency evaluations, (b) review the components of a standard of care, (c) examine a standard of care for a related psychology specialty, and (d) synthesize the literature to inform a standard of care for forensic psychological competency evaluations. The literature review included a search of national databases to integrate salient features and understand obstacles in the creation of a standard of care for forensic psychological competency evaluations.

To answer the second research question, semi-structured interviews were conducted with clinical psychologists in order to understand their current practice procedures and recommendations for thorough and accurate competency evaluations, and learn about their experiences in their adherence to the established guidelines, standards of practice, and principles when conducting competency evaluations. To contact potential participants in the American Academy of Forensic Psychology (AAFP), email addresses for AAFP members were obtained from the diplomate directory on the AAFP Web site. The researchers selected geographically available participants from the AAFP website, to increase the possibility of face-to-face interviews. To contact potential participants through the American Psychological Association Division 41, a recruitment email message was sent to members of the



AP-LS. Personal and professional contacts were be utilized and requests for participation in the study will be completed through email. Specifically, supervisors at the researchers' internship sites helped identify psychologists in the field appropriate for the study. The first six individuals who responded and met the inclusion criteria were selected as participants. Individuals who received the email had the option to ignore the email or refuse to participate. If an individual expressed interest in participating in the study, the individual was provided with a copy of the informed consent document. If the interview was conducted face-to-face, the researcher provided the participant with a hard copy of the informed consent form to read, review, and sign. If the interview was conducted by telephone, the document was emailed, mailed or faxed. The individual was asked to read and sign the document and either fax, mail, or email a scanned copy of the signed document back to the researcher before the interview could be completed. In addition, the individual was made aware the researchers are available to answer any questions pertaining to the informed consent form or participation in the study. The informed consent form was also verbally reviewed with each participant before the interview was conducted. Informed consent was obtained before commencement of the interview to ensure individuals were made aware of what participation in the study entails and the potential risks and benefits. Individuals had the option to accept or decline to participate in the study. Participants were made aware through the informed consent process that they may refuse to participate and/or withdraw their consent and discontinue participation in the study at any time without penalty.

Prior to commencement of the interview, the purpose of the study was verbally explained, informed consent was confirmed, and an explanation regarding the format of the interview process was provided. Participants were made aware the interviewer may ask follow-up questions for purposes of adding clarification to the participants' responses to the questions. The semi-structured interviews were completed either face-to-face or over the phone, based on the participants' preferred means of communication. If the participant preferred an in-person interview and it was geographically feasible, the interview was conducted at the participant's office. Pre-interview questions were asked immediately before the semi-structured interview to gather information regarding the participants' occupational settings and clinical experience conducting competency and personal injury evaluations. Due to common confusion regarding the difference between a standard of practice and standard of care, participants were provided with definitions of the two concepts and informed the interview questions focused on the development of a standard of care. The semi-structured interviews consisted of predetermined questions, and clarifying and probe questions, as deemed necessary by their response (see Appendix G).

After a review of the relevant literature, the interview questions were developed for information retrieval purposes and to provide a practical perspective regarding the current practice procedures and recommendations of the study participants. Due to the ongoing nature of the literature review, additional professionally related follow-up questions were added. The ongoing process of conducting interviews may allow the researchers to add additional follow-up

questions to justify an in-depth study. The pre-interviews and interviews were recorded electronically through the use of a recording device. Interviews completed face-to-face or over the phone were transcribed by one of the two researchers (see Appendices H-M for interview transcripts).

### **Analysis**

The integrative literature review and analysis of the interviews resulted in the identification of the key concepts and important themes in a standard of care and forensic psychological competency evaluations. The researcher developed domains and constructed core ideas within the cases. Cross analysis of the data was completed to organize the core ideas into categories within domains across these cases. The data was then integrated within these categories and audited to review the cross analysis. The interviewees' statements were clustered into common, relevant themes, and significant statements were highlighted and listed to emphasize important information.

### **Results**

The information gathered during the interviews was categorized into the overarching themes recommended in the literature for a proposed standard of care for forensic mental health assessment, which corresponded well to the interview results (Conroy, 2006; Goldstein, 2007). Therefore, the interview findings will be presented under the following domains: (a) ethical conduct, (b) necessary knowledge of the legal system, (c) use of appropriate methodology, (d) inclusion of information from a variety of data sources, (e) awareness of relevant empirical research, (f) proper

preparation and presentation of findings to the legal system, and (g) adherence to an expected threshold of quality (Conroy, 2006; Goldstein, 2007). Within each domain, the interview questions that directly relate to the specific domain will be identified and the major themes of the interview results will be presented. Categorization of the interview results within these suggested domains allows for a comprehensive presentation of the interview results and integration of the literature review and interview findings.

## **Findings**

**Ethical conduct.** The researchers identified several interview questions that fall under the domain of ethical conduct:

*What are the major ethical challenges or dilemmas you face when conducting personal injury and/or competency evaluations? How might these challenges be addressed in a standard of care? What role do diversity factors play in forensic evaluations and how are they addressed?*

The research participants identified a variety of ethical challenges during the interviews. The most commonly cited ethical challenge was the significance of objectivity and reduction of bias (see Appendices I, K, and L). Participant 2 stated, “Objectivity is probably the biggest challenge; there is always a temptation to want to “help” the retaining attorney and it is a constant challenge to remain objective.” Participant 5 acknowledged the pressure psychologists may feel from the referral source and indicated this pressure is particularly strong for private practice psychologists (see Appendix L). Interview participants voiced the concern that a lack

of objectivity negatively impacts the credibility of the field of forensic psychology (see Appendices L and M).

Another common theme was the importance of proper explanation of the evaluation to the individual. This entails clarification and maintenance of the evaluator's specific role, informed consent, and the limits of confidentiality (see Appendices H and J). Other ethical challenges included balance of the interests of multiple parties (see Appendix H), acknowledgment of the limits of an evaluation (see Appendix K), and knowledge of what information should and should not be included in a report (see Appendix H).

The research participants offered potential solutions to address these ethical concerns. With regard to objectivity and bias reduction, Participant 2 reported, "I think vigilance is the only solution... My approach to managing this is to try and conceptualize the case as if I had been retained by the other side" (see Appendix I). In an effort to reduce the possibility of a potentially biased evaluation, Participant 5 suggested gathering collateral information independent from the referral source (see Appendix L). Individuals who are being evaluated must be explicitly informed of the purpose of the evaluation, the role of the psychologist, who will receive results of the evaluation, and the limits of confidentiality (see Appendix J). Participant 6 suggested a standard of care might serve as a form of external pressure to complete more objective evaluations (see Appendix M). Participants 1 and 4 reported a standard of care could also help clarify the expectations of a forensic evaluation for the court and attorneys, as well as improve the credibility of forensic psychology. "Having a

delineated guideline for evaluations would help align forensic psychology to the black and white personality of the law. Our field still has a long way to go in gaining further credibility with the legal system. I think a well-designed standard of care could help with this” (see Appendix K).

An important theme related to ethical conduct is the management of relevant cultural factors, particularly evaluation of non-English speaking individuals. Participants reported the necessity of appropriate utilization of translators; however, the use of translator services creates an additional challenge because the translator may unintentionally filter the translation (see Appendix L). Participant 5 reported, “If someone is psychotic and their speech is disorganized and maybe not quite adding up to a full sentence or making that sentence coherent, sometimes the interpreters tend to just fill in the blanks... that can really skew the results of the evaluation” (see Appendix L). Participant 6 also reported crucial information may be lost in translation, due to the nuanced nature of a clinical interview (see Appendix M). In addition to language-specific issues, Participant 5 emphasized appreciation of an individual’s culture to assist with the establishment of rapport (see Appendix L). Participant 3 and Participant 6 both indicated cultural beliefs, including religious beliefs, might be misidentified as religious delusions or symptoms of psychosis and need to be properly assessed in a culturally sensitive manner (see Appendices J and M). Participant 4 suggested a standard of care could be beneficial in providing guidance to address cultural factors and should provide minimally acceptable

standards, including the use of appropriate assessment methodologies for various cultural groups (see Appendix K).

**Necessary knowledge of the legal system.** The following interview question was directly related to the domain of necessary knowledge of the legal system:

*How do you define an expert?*

All the participants offered definitions of an expert that integrated the value of education and experience in the specific specialty area. Participant 1 stated an expert is, “Someone who has some unique knowledge in an area based on experience and education. In the context of court, a forensic expert is someone that can help inform the court based on their experience and education” (see Appendix H). In addition, an expert was defined as a psychologist who holds a Ph.D. or Psy.D. and is currently licensed (see Appendix L). Participant 6 discussed the importance of formalized training and/or mentorship in the specialty area (see Appendix M).

**Use of appropriate methodology.** Questions regarding the domain of appropriate use of methodology include:

*What do you believe are the most common challenges, omissions, or errors made when psychologists complete competency evaluations? Do you assess for feigning and exaggeration? When, why, and how?*

A major theme with regard to proper methodology was inadequate assessment of the referral issue (see Appendices H, I, L, and M). Participant 6 reported it was problematic when clinicians provide “opinions not backed by data. Sometimes you read a whole report and then don’t know how they reached the opinion at the end. I

think that is the most egregious mistake” (see Appendix M). Participant 2 reported many evaluators ask basic questions related to the psycholegal issue, but fail to adequately address more complex cognitive functioning (e.g., rational decision process) and the attorney/client relationship (see Appendix I). Participant 5 stated evaluators sometimes utilize inappropriate methodology (see Appendix L). For example, administration of projective personality measures when the question at hand may be the individual’s factual and rational understanding of the legal process. Participant 6 reported it can “muddle the waters” when evaluators address other forensic issues (e.g., criminal responsibility and/or dangerousness) in a competency evaluation, rather than maintaining focus on the specific psycholegal question (see Appendix M). Participants also cited insufficient use of collateral information (see Appendices H and L) as a common error.

All of the participants reported assessment of feigning and exaggeration is a crucial aspect of any forensic evaluation (see Appendices H, I, J, K, L, and M). The participants emphasized the value of self-report measures, as well as assessment of feigning or exaggeration of cognitive deficits and/or psychopathology through the use of appropriate standardized measures. It was agreed this testing should be completed on an as needed basis. Strategies for assessment of malingering included use of the Test of Memory Malingering (TOMM), Structured Inventory of Reported Symptoms (SIRS), Miller Forensic Assessment of Symptoms Test (MFAST), Validity Indicator Profile (VIP), Minnesota Multiphasic Personality Inventory-2 (MMPI-2), Minnesota Multiphasic Personality Inventory-2 Restructured Form (MMPI-2 RF), Rey 15-Item



Memory Test, and Dot Counting Test. Participants 1, 2 and 4 all reported administration of a self-report measure as part of their standard protocol, such as the MMPI-2, MMPI2 RF, or PAI, unless there are factors that make it unfeasible (e.g., language barrier, time limit, illiteracy) (see Appendices H, I, and K). Participants 1, 2, and 5 also reported frequent use of the TOMM and SIRS (see Appendices H, I, and L). If a case is more complicated and cognitive issues are a concern, Participants 1 and 2 indicated routine use of the VIP (see Appendices H and I).

**Inclusion of information from a variety of data sources.** The research participants were asked the following questions related to this domain:

*What role does third party information play when conducting a competency and/or personal injury evaluation? What sources do you typically utilize (i.e., medical records, criminal records, collateral sources)?*

Collateral information from third-party sources was highly valued by all of the research participants. Participant 5 stated, “It is very important to be able to corroborate the information you’re getting or point out any contradictions” (see Appendix L). Participants reported review of the court order, and review of medical, mental health, education, and criminal records (see Appendices H, J, and K). Participants recommended interviews with family members, treatment providers, defense attorneys, and prosecutors (see Appendices I, J, and L). In addition to collateral information, participants reported use of multiple data sources, such as a clinical interview and multiple testing instruments, to measure a specific construct (see Appendix K).

**Awareness of relevant empirical research.** The following questions were identified as related to the domain of awareness of relevant empirical research:

*What guides you to test or not to test when conducting competency and/or evaluations? When you use testing, how do you construct the battery of tests? Do you have a fixed battery or do you customize a flexible battery?*

The overall theme was the significant role of psychological testing in competency evaluations. Participants all expressed an appreciation of a flexible battery to address the referral question and specific psycholegal issues (see Appendices H, I, J, K, L, and M). “What really guides me is the suspected reason for the person’s possible incompetence” (see Appendix L). None of the participants reported use of a fixed battery. Psychological testing was recommended to assess diagnostic clarification, cognitive abilities, malingering, and personality features (see Appendix H, J, and K). Participant 2 reported, “Most testing is based on the need to clarify (a) test-taking style/response bias (e.g., malingering or minimization), (b) diagnostic questions, (c) cognitive functioning, and (d) specific psycholegal issues (e.g., psychopathy)” (see Appendix I).

Interview responses indicated the importance of remaining up-to-date with relevant research. Participant 3 reported the utilization of psychological tests to measure different constructs that are well established in the field and admissible in court (see Appendix J). Participant 3 also reported commonly using more than one test to measure a specific construct and warned against overgeneralization of test results (see Appendix J). In addition, participants noted the tests utilized must be

appropriate for the specific individual being evaluated. Participant 4 stated, “always use gender, culture, language, age normed assessments for your client. Otherwise its useless” (see Appendix K). While the importance of psychological testing was clear, the participants acknowledged time constraints sometimes impact the extent of psychological testing (see Appendix H).

**Proper preparation and presentation of findings to the legal system.**

Relevant questions include:

*What exactly do you do when conducting a competency evaluation? Guide me through the different phases, from the referral process to the completion of the assessment including the level of structure in interviews. Do you follow a standardized format? What are some of the core tests that you use? Do you express the ultimate opinion in your reports?*

Major themes were identified with regard to the recommended practice procedures throughout the evaluation process. The process of competency evaluation can be divided into pre-evaluation preparation, evaluation, and post-evaluation. During pre-evaluation preparation, participants reported review of the court order, collateral information, including any prior forensic or psychological evaluations, medical records, criminal records, and mental health treatment information, such as involvement in psychotherapy and current medications (see Appendices H, I, and L). Participants recommended interviewing the referral source, the prosecutor and defense attorney (see Appendix L and M). One participant stated they routinely

discuss the case with the attorney and negotiate fee and arrangements, including if the attorney will be present (see Appendix I).

During the evaluation, participants reported steps include the obtainment of informed consent, explanation of the limits of confidentiality, clarification of their role and purpose of the evaluation, request for any necessary releases of information, and completion of either a semi-structured or structured interview with the individual (see Appendices H, I, J, L, and M). The interviews consist of relevant background information, a mental status exam, discussion of the case, and assessment of competency-related abilities (see Appendix I). With regard to testing, participants stated they consider assessing the individual's intelligence or cognitive functioning (e.g., WAIS-IV), personality (e.g., MMPI-2, PAI), substance use (SASI) and/or malingering (e.g., MFAST, SIRS, TOMM, VIP). They reported the decision to test may be influenced by collateral information and information obtained during the clinical interview (see Appendices H, I, and L). With regard to competency-specific abilities, participants reported using either a semi-structured interview or a structured interview (see Appendices K, L, and M). Participant 5 reported a competency-specific interview consists of questions addressing legal proceedings, court procedures, participants in the legal process (e.g., judge, prosecutor, defense attorney, witnesses), the adversarial nature of the legal process, understanding of the need for behavioral control in the courtroom, and ability and willingness to cooperate in their own defense with their attorney (see Appendix L). Participant 5 also reported using the Competency Screening Test (CST), a sentence-completion screening instrument

(see Appendix L). Participant 6 reported using a structured interview developed throughout the course of training and experience (see Appendix M). Participant 6 reported preference for a structured interview, as compared to a standardized test, because it allows for the inclusion of more qualitative data throughout the interview (see Appendix M).

Post-evaluation steps may include interviews with additional collateral sources, scoring and interpretation of psychological tests, preparation of the report in accordance with the appropriate statutes, and testimony, if applicable (see Appendices I and L).

Participants 1, 2, 5, and 6 reported expressing the ultimate opinion in their reports (see Appendices H, I, L, and M). Participant 2 reported the decision regarding expression of the ultimate opinion was based on the evaluation type and level of certainty (see Appendix I). Participant 2 reported the evaluations focused on the elements of competency (factual and rational understanding of the court proceedings and ability to assist) and concluded with a statement as to the ultimate issue (see Appendix I). Participants reported judges often want the evaluator to express an ultimate opinion, but emphasized the judge ultimately determines the decision with regard to the legal questions and the evaluator's opinion may or may not be accepted (see Appendices H, I, and M).

**Adherence to an expected threshold of quality.** Questions addressing the domain of adherence to an expected threshold of quality include:

*What standards/guidelines do you follow when completing forensic psychological evaluations? Do you think a standard of care would be beneficial to the field of forensic psychological assessment? What would a standard of care for a competency evaluation entail? How would a standard of care be helpful to you in conducting competency evaluations? How would a standard of care be helpful in clarifying the “ultimate issue” issue?*

Participants reported following the standards of the Specialty Guidelines for Forensic Psychology, the APA Ethics Code, and professional practice standards (see Appendix L). In addition, the guidelines and standards that were employed during training and by mentors in the specialty area are utilized to inform their practice procedures (see Appendix M). All participants reported a standard of care would be beneficial to the field of forensic psychological assessment.

One of the most interesting aspects of the interview results were the participants’ opinions regarding what should be included if a standard of care for competency evaluation were developed. Participants highlighted the following major components: sufficient knowledge of relevant case law and state and federal statutes (see Appendix H); adherence to relevant ethical guidelines (see Appendix M); culturally-sensitive practice recommendations (see Appendix I); required review of collateral information (see Appendix H, I, and L); adequate training and use of appropriate testing (see Appendix H); consideration and/or assessment of malingering (see Appendix I); and guidance regarding the appropriate structure of a forensic evaluation (see Appendix M).

Interview responses indicated participants believed a standard of care would help clarify the expectations of the court, prosecutor, defense attorney, and the evaluators (see Appendix H). A participant shared the opinion that increased standardization and clear guidelines would increase confidence in the final evaluation (see Appendix M). Participant 2 reported a standard of care might help eliminate any confusion regarding the appropriateness of ultimate issue testimony (see Appendix I). However, participants acknowledged a standard of care would be difficult to create because it is necessary to maintain a flexible approach based on case-specific details (e.g., if and what type of testing is appropriate, relevance of collateral information) (see Appendices I and L). One participant reported they did not believe a standard of care would directly benefit them, but may benefit less experienced clinicians (see Appendices I).

### **Discussion**

There is significant overlap between the literature review and interview findings, suggesting the following domains for a proposed standard of care are a useful way to organize a standard of care for competency evaluations: (a) ethical conduct, (b) necessary knowledge of the legal system, (c) use of appropriate methodology, (d) inclusion of information from a variety of data sources, (e) awareness of relevant empirical research, (f) proper preparation and presentation of findings to the legal system, and (g) adherence to an expected threshold of quality (Conroy, 2006; Goldstein, 2007). As noted in the methods section, there is confusion in the field regarding the differentiation between a standard of practice and a standard

of care. This confusion suggests it may be valuable to highlight this distinction during graduate or clinical training of clinical psychologists. This is particularly important, given the legal implications of not abiding by a standard of care.

The major ethical challenges identified by the research participants were maintenance of objectivity, reduction of bias, proper explanation of the evaluation (e.g., clarification and maintenance of the evaluator's specific role, informed consent, and the limits of confidentiality), and adequate attention to cultural factors, including the evaluation of non-English speaking individuals. Necessary knowledge of the legal system, specifically relevant case law and statutes, was emphasized.

With regard to the use of appropriate methodology, the participants reported common errors include inadequate assessment of the referral issue, use of inappropriate testing, and insufficient collateral information. Results of the interviews highlighted the necessity of incorporating information from third party sources (e.g., record review, interviews). All participants consider feigning or exaggeration of cognitive deficits and or psychopathology a necessary feature of competency evaluations. A variety of instruments were recommended to measure these constructs. Overall, the participants highly valued psychological testing and included at least some standardized testing in their competency evaluations. The extent of testing varied between the participants and was dependent on the specific referral questions, collateral information, and the individual's presentation during the evaluation. Testing often addressed diagnostic issues, cognitive functioning, psychopathology, and competence-specific abilities. The participants reported similar



formats for completion of a competency evaluation, including pre-evaluation preparation, evaluation, and post-evaluation steps. Semi-structured or structured interviews were utilized by all of the interview participants.

The participants reported use of the Specialty Guidelines for Forensic Psychology, the APA Ethics Code, professional practice standards, research, and guidelines and standards that were employed by mentors to inform their current practice procedures. All of the participants indicated a standard of care would be valuable to the field of forensic psychology. Recommendations for a standard of care included sufficient knowledge of relevant case law and state and federal statutes; adherence to relevant ethical guidelines; culturally-sensitive practice recommendations; required review of collateral information; adequate training and use of appropriate testing; consideration and/or assessment of malingering; and guidance regarding the appropriate structure of a forensic evaluation.

The psychologists interviewed acknowledged the difficulty inherent to the creation of a standard of care for evaluations that require a flexible approach. However, the current standard of care for child custody evaluations suggests it is possible, and beneficial, to create a standard of care designed for a flexible approach that takes into consideration case-specific issues. The literature review and interview results both indicate there is wide variability in competency evaluation practice procedures. Results suggest there are a variety of appropriate approaches; however, this variability in practice procedures may relate to a concern identified by the research participants- lack of objectivity and bias. While a standard of care should

not require specific measures, it may require consideration of necessary aspects relevant to competency, and serve as a guide for the completion of a comprehensive competency evaluation. One of the most important reasons identified by the research participants for the development of a standard of care is the likelihood a standard of care would improve the credibility of forensic psychology within the judicial system. Notably, the overall findings of this study indicate clinical psychologists who currently conduct competency evaluations are supportive of the proposed development of a standard of care for competency evaluations.

Consequently, a standard of care for competency evaluations that values a flexible approach would be highly beneficial and should address four key elements: ethical considerations, use of appropriate methodology, report writing guidance (e.g., mechanical, stylistic, appropriate content), and cultural sensitivity. With regard to ethical considerations, it may be helpful for a standard of care to address the necessity of gathering collateral information (e.g., prosecutor, defense attorney, treatment provider, family member) and appropriate documentation of these efforts. The forensic evaluator should also clarify their role, emphasizing their professional relationship with the examinee and the difference between a clinical encounter and a forensic evaluation. The participants highlighted the value of a flexible psychological test battery; however, the literature review and all participants stated an assessment of feigning or exaggeration of symptoms is integral to a competency evaluation. Therefore, a standard of care may include the necessity of a consideration of malingering. Report writing guidance may include a template for a competency

evaluation that meets the minimum requirements set forth in a standard of care.

Major issues that should be included in relation to cultural sensitivity are the use of translators, appropriate methodology for different cultural groups, and cultural awareness during clinical interviews. Most importantly, the results of this study support the use of the framework presented (i.e., the seven domains recommended for a standard of care for forensic evaluations) to assist with the creation of a standard of care for competency evaluations.

### **Limitations**

Identified limitations include: (a) The sample is comprised of individuals who volunteered to participate in the study; (b) The sample was not randomly drawn and is not be representative of a national sample; (c) The information obtained through the semi-structured interviews is bound by the specific interview format (i.e., specific semi-structured questions, interview length, method of communication); (d) Participants are considered to be forthright and honest. However, limitations exist in the fact that the information gathered was through self-report and interviews, rather than a systematic review of the participants' actual practice procedures; (e) Due to the small sample size and sample selection methods, generalizability is limited; and (f) Inherent in the limitations is the fact that participants may be working in different jurisdictions. Each state and the federal judicial system have different laws, regulations, and standards of admissibility (i.e., Frye or Daubert) that will be relevant to their practice procedures. Of note, all participants interviewed in the current study

conduct competency evaluations in a jurisdiction that follows Daubert admissibility standards.

An additional limitation is due to the use of qualitative content analysis. The process is influenced by the subjective nature of the content analysis and is susceptible to researcher bias. In addition, there may have been inherent bias associated with the deductive aspects of this qualitative approach. The researchers may have been more likely to find evidence that was supportive of the proposed themes of a standard of care for forensic psychological assessment identified in previous research.

### **Future Research**

It would be valuable to conduct similar semi-structured interviews with a larger, more representative national sample, including clinical psychologists who conduct competency evaluations in a wide range of jurisdictions. Based on the results of this study, questions may be further clarified to obtain more detailed information regarding specific content areas. Interestingly, there was significant variation in the recommendations in the literature and the participants regarding the use of psychological testing to assess specific psycholegal abilities. Future research may clarify the utility of these assessment measures, as compared to semi-structured interview formats. A survey format may be helpful to gather information regarding practice procedures of clinical psychologists conducting competency evaluations on a larger scale. In addition, it is important to remember the purpose of a competency evaluation is to assist the judicial system and provide information regarding specific

psycholegal questions. As such, it may be beneficial to gather additional input from members of the legal community (e.g., judges, prosecutors, defense attorneys) to include their experiences and recommendations regarding helpful features of a competency evaluation and common issues they have identified in the completion of competency evaluations.

The findings of this study provide further support for the use of the domains that have been identified for a proposed standard of care for forensic psychological evaluations (Conroy, 2006; Goldstein, 2007): (a) ethical conduct, (b) necessary knowledge of the legal system, (c) use of appropriate methodology, (d) inclusion of information from a variety of data sources, (e) awareness of relevant empirical research, (f) proper preparation and presentation of findings to the legal system, and (g) adherence to an expected threshold of quality. These domains, coupled with common themes found in the interview results, may be utilized to direct and frame the development of a standard of care for competency evaluations.

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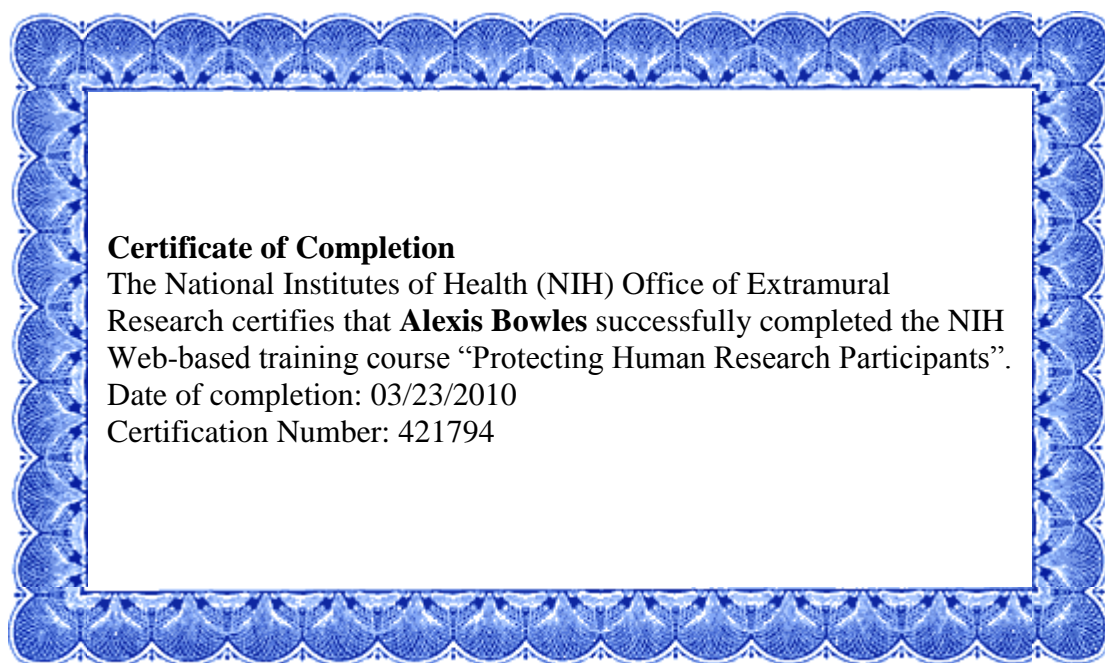
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## APPENDIX A

Protecting Human Research Participants – NIH Web-based Training Certificate



## APPENDIX B

### AAFP Listserv Recruitment Material

**FOR LISTSERVS:**

**ATTENTION ALL AAFP MEMBERS:**

**You have been invited to participate in a 45-60 minute  
CONFIDENTIAL interview about the development of a  
STANDARD OF CARE for FORENSIC EVALUATIONS of  
COMPETENCY and/or PERSONAL INJURY**

Participation in this study is voluntary and confidential. The study poses no more than minimal risk. Participants are free to omit any questions they do not want to answer or may withdraw from the study at any time.

We are seeking licensed psychologists who consider forensic psychological assessment a significant portion of their practice or academic concentration.

The interview will be composed of questions regarding your forensic evaluation practice procedures and recommendations regarding the development of a standard of care for competency and/or personal injury evaluations.

This research study conducted by Clinical Psychology Psy.D. students at Pepperdine University. For more information and to discuss study eligibility, contact the researchers, Laura Troolines, at (---) ----- or \_\_\_\_\_@pepperdine.edu or Alexis Bowles at (---) ----- or \_\_\_\_\_@pepperdine.edu. All correspondence is strictly confidential. This research is supervised by Dr. Robert deMayo, Ph.D., ABPP, Associate Dean and Professor of Psychology. He may be contacted at \_\_\_\_\_@pepperdine.edu.

Thank you for your consideration.

\*\*\*\*\*



## APPENDIX C

## AP-LS Listserv Recruitment Material

**FOR LISTSERVS:**

**ATTENTION ALL AP-LS MEMBERS:**

**You have been invited to participate in a 45-60 minute  
CONFIDENTIAL interview about the development of a  
STANDARD OF CARE for FORENSIC EVALUATIONS of  
COMPETENCY and/or PERSONAL INJURY**

Participation in this study is voluntary and confidential. The study poses no more than minimal risk. Participants are free to omit any questions they do not want to answer or may withdraw from the study at any time.

We are seeking licensed psychologists who consider forensic psychological assessment a significant portion of their practice or academic concentration.

The interview will be composed of questions regarding your forensic evaluation practice procedures and recommendations regarding the development of a standard of care for competency and/or personal injury evaluations.

This research study conducted by Clinical Psychology Psy.D. students at Pepperdine University. For more information and to discuss study eligibility, contact the researchers, Laura Troolines, at (---) ----- or \_\_\_\_\_@pepperdine.edu or Alexis Bowles at (---) ----- or \_\_\_\_\_@pepperdine.edu. All correspondence is strictly confidential. This research is supervised by Dr. Robert deMayo, Ph.D., ABPP, Associate Dean and Professor of Psychology. He may be contacted at \_\_\_\_\_@pepperdine.edu.

Thank you for your consideration.

\*\*\*\*\*

## APPENDIX D

### Email Recruitment Letter

## **FOR EMAIL DISTRIBUTION:**

Hello,

We are doctoral students in clinical psychology at Pepperdine University in Los Angeles, supervised by Dr. Robert deMayo, Ph.D., ABPP, Associate Dean and Professor of Psychology.

We are working on our dissertation and are inviting psychologists who consider forensic psychological assessment a significant portion of their practice or academic concentration to participate in a confidential interview about a STANDARD OF CARE for FORENSIC COMPETENCY and/or PERSONAL INJURY EVALUATIONS. It will take approximately 45-60 minutes to complete the interview.

The interview will be composed of questions regarding your forensic evaluation practice procedures and recommendations regarding the development of a standard of care for competency and/or personal injury evaluations.

Participation in this study is voluntary and confidential. The study poses no more than minimal risk. Participants are free to omit any questions they do not want to answer or may withdraw from the study at any time.

This research study conducted by Clinical Psychology Psy.D. students at Pepperdine University. For more information and to discuss study eligibility, contact the researchers, Laura Troolines, at (---) ----- or \_\_\_\_\_@pepperdine.edu or Alexis Bowles at (---) ----- or \_\_\_\_\_@pepperdine.edu. All correspondence is strictly confidential. This research is supervised by Dr. Robert deMayo, Ph.D., ABPP, Associate Dean and Professor of Psychology. He may be contacted at \_\_\_\_\_@pepperdine.edu.

Thank you for your consideration.

Alexis Bowles  
Doctoral Candidate, Pepperdine University

Laura Troolines  
Doctoral Candidate, Pepperdine  
University

## APPENDIX E

## Research Consent Form

## INFORMED CONSENT FOR PARTICIPATION IN RESEARCH ACTIVITIES

Participant: \_\_\_\_\_

Principal Investigators: Alexis Bowles, M.A.

Title of Project: \_\_\_\_\_ The Development of a Standard of Care for  
Competency Evaluations

1. I \_\_\_\_\_, agree to participate in the research study being conducted by Alexis Bowles and Laura Troolines under the direction of Dr. Robert deMayo, Ph.D., ABPP, Associate Dean and Professor of Psychology, Pepperdine University.
2. The overall purpose of this research is: to inform the development of a standard of care for forensic competency and personal injury evaluations.
3. My participation will involve the following: Providing my opinion to questions regarding my forensic evaluation practice procedures and recommendations regarding the development of a standard of care for competency and/or personal injury evaluations.
4. My participation in the study will last approximately 45-60 minutes. The study shall be conducted in-person or over the telephone. Out of respect for my time, the interviewer may redirect me to the interview questions in an effort to keep the interview within the allotted time frame.
5. I understand that there are no direct benefits to myself for participation in this study. However, the possible benefits to myself or society from this research are: to increase the credibility of forensic psychological assessment and to enhance the reliability and validity of competency and personal injury assessments for the courts. I may also feel a sense of satisfaction from participating in this research study.
6. Participation in this study poses no more than minimal risk. However, I understand there are minor risks or discomforts that may be associated with this research. These risks include: Potential inconvenience due to the 45-60 minute time commitment, boredom and fatigue. Additional risks include the possibility of discomfort discussing professional practice standards, feeling self-conscious expressing my personal opinions on the subject matter, and unease describing my specific practice procedures. To mitigate such risks, I could take a break, not answer the question, or end participation in the study.

7. I understand that I may choose not to participate in this research.
8. I understand that if I disclose any potential unethical practice(s), the interviewer will consult the dissertation chairperson, Dr. Robert deMayo for guidance in handling the matter.
9. I understand that my participation is voluntary and that I may refuse to participate and/or withdraw my consent and discontinue participation in the project or activity at any time without penalty or loss of benefits to which I am otherwise entitled.
10. I understand that the investigator(s) will take all reasonable measures to protect the confidentiality of my records and my identity will not be revealed in any publication that may result from this project. The confidentiality of my records will be maintained in accordance with applicable state and federal laws. Under California law, there are exceptions to confidentiality, including suspicion that a child, elder, or dependent adult is being abused, or if an individual discloses an intent to harm him/herself or others.
11. I understand that the investigator is willing to answer any inquiries I may have concerning the research herein described. I understand that I may contact Dr. Robert deMayo, Ph.D., ABPP, Associate Dean and Professor of Psychology if I have other questions or concerns about this research. If I have questions about my rights as a research participant, I understand that I can contact Jean Kang, manager of Pepperdine University's IRB at (---) ----- or \_\_\_\_\_@pepperdine.edu.
12. I understand to my satisfaction the information regarding participation in the research project. All my questions have been answered to my satisfaction. I have received a copy of this informed consent form, which I have read and understand. I hereby consent to participate in the research described above.

---

Participant's Signature

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Date

---

Witness

---

Date

I have explained and defined in detail the research procedure in which the subject has consented to participate. Having explained this and answered any questions, I am cosigning this form and accepting this person's consent.

---

Principal Investigator

---

Date



## APPENDIX F

### Pre-Interview Background Questions

1. Age
  - ☐ 22 to 34
  - ☐ 35 to 44
  - ☐ 45 to 54
  - ☐ 55 to 64
  - ☐ 65 and Over
2. Gender
  - ☐ Male
  - ☐ Female
3. Type of degree
4. State in which you are licensed?
5. In what settings have you completed forensic evaluations?
  - Criminal? Civil? Private practice? Court-ordered?
6. Do you conduct personal injury evaluations, competency evaluations or both?
7. How many personal injury and/or competency evaluations have you completed?

## APPENDIX G

## Interview

## Interview

We will be inquiring about the development of a **standard of care**. We will not be inquiring about a **standard of practice**. Definitions are provided below to clarify differences between the two.

### Definitions

**Standard of Practice:** A generally accepted way of doing something in a particular field. It is aspirational in nature and deviation from a standard of practice does not result in civil liability, but may result in sanctions (Heilbrun et al., 2008).

**Standard of Care:** Minimally acceptable standards of professional conduct in a context that is judicially determined by a court of law. Adherence is mandatory and breach of this standard may result in professional liability (Heilbrun et al., 2008). Based on statutes, case law, licensing board regulations, professional ethical codes, consensus of the professional community, and relevant specialty guidelines. A proposed standard of care for forensic mental health assessment includes: a) ethical conduct, b) necessary knowledge of the legal system, c) use of appropriate methodology, d) inclusion of information from a variety of data sources, e) awareness of relevant empirical research, f) proper preparation and presentation of findings to the legal system, and g) adherence to an expected threshold of quality (Conroy, 2006; Goldstein, 2007).

## Semi-Structured Questions

### General Questions

1. Do you think a standard of care would be beneficial to the field of forensic psychological assessment?
2. What standards/guidelines do you follow when completing forensic psychological evaluations?
3. Have you completed personal injury evaluations? If so, how many? Have you completed competency evaluations? If so, how many?

4. What guides you to test or not to test when conducting personal injury and/or competency evaluations? When you use testing, how do you construct the battery of tests? Do you have a fixed battery or do you customize a flexible battery?
5. What are the major ethical challenges or dilemmas you face when conducting personal injury and/or competency evaluations?
6. How might these challenges be addressed in a standard of care?
7. What role do diversity factors play in forensic evaluations and how are they addressed?
8. Do you assess for feigning and exaggeration? When, why, and how?
9. What role does third party information play when conducting a competency and/or personal injury evaluation? What sources do you typically utilize? (i.e., medical records, criminal records, collateral sources)

### **Specialized Personal Injury Evaluation Questions**

Do you conduct Personal Injury Evaluations? If so, ...

1. Describe your approach and methods to evaluate personal injury.
  - What exactly do you do when conducting a personal injury evaluation? Guide me through the different phases, from the referral process to the completion of the assessment. What are some of the core tests that you use?
2. What would a standard of care for a personal injury evaluation entail?
3. What do you believe are the most common challenges, omissions, or errors made when psychologists complete personal injury evaluations?

4. How would a standard of care be helpful to you in conducting personal injury evaluations?

### **Specialized Competency Evaluation Questions**

Do you conduct Competency Evaluations? If so, ...

1. Describe your approach and methods to evaluate competency.
  - What exactly do you do when conducting a competency evaluation? Guide me through the different phases, from the referral process to the completion of the assessment including the level of structure in interviews. Do you follow a standardized format? What are some of the core tests that you use?
2. What would a standard of care for a competency evaluation entail?
3. What do you believe are the most common challenges, omissions, or errors made when psychologists complete competency evaluations?
4. Do you express the ultimate opinion in your reports?
5. How would a standard of care be helpful in clarifying the “ultimate issue” issue?
6. How would a standard of care be helpful to you in conducting competency evaluations?

### **Closing Questions**

1. How do you define an expert?
2. Is there anything else you would like to add?

## APPENDIX H

## Participant 1 Interview Transcript

### Pre-Interview Background Questions

1. Age

- ☐ 22 to 34
- ☒ 35 to 44
- ☐ 45 to 54
- ☐ 55 to 64
- ☐ 65 and Over

2. Gender

- ☒ Male
- ☐ Female

3. Type of degree

- ☒ Psy.D.
- ☐ Ph.D.
- ☐ Ed.D.
- ☐ or other (please specify)

4. State in which you are licensed?

New York

5. In what settings have you completed forensic evaluations?

- Criminal? Civil? Private practice? Court-ordered?

All

6. Do you conduct personal injury evaluations, competency evaluations or both?

Both

7. How many personal injury and/or competency evaluations have you completed?

10 personal injury

200 competency

### Interview

We will be inquiring about the development of a standard of care. We will not be inquiring about a standard of practice. Definitions are provided below to clarify differences between the two.

### Definitions



**Standard of Practice:** A generally accepted way of doing something in a particular field. It is aspirational in nature and deviation from a standard of practice does not result in civil liability, but may result in sanctions (Heilbrun et al., 2008).

**Standard of Care:** Minimally acceptable standards of professional conduct in a context that is judicially determined by a court of law. Adherence is mandatory and breach of this standard may result in professional liability (Heilbrun et al., 2008). Based on statutes, case law, licensing board regulations, professional ethical codes, consensus of the professional community, and relevant specialty guidelines. A proposed standard of care for forensic mental health assessment includes: a) ethical conduct, b) necessary knowledge of the legal system, c) use of appropriate methodology, d) inclusion of information from a variety of data sources, e) awareness of relevant empirical research, f) proper preparation and presentation of findings to the legal system, and g) adherence to an expected threshold of quality (Conroy, 2006; Goldstein, 2007).

### Semi-Structured Questions

#### General Questions

1. Do you think a standard of care would be beneficial to the field of forensic psychological assessment?

Yes

2. What standards/guidelines do you follow when completing forensic psychological evaluations?

Well, there are a lot of different areas where this is significant. I think that the field of forensic psychology is very much in its infancy in a lot of ways, especially for the complex forensic questions that come up. I think some things that stand out for me right away are issues related to culture. For example, for certain assessment instruments may not be validated with the person's culture. And the decisions from forensic evaluations affect people's life and liberty.

Regarding malingering and detecting deception, I think that people say that with any sort of forensic question, you need to rule out malingering to see if the person is being genuine. I think that's something that's really important as far as standard of care goes for any forensic assessment. And then, that gets even more complicated because you have to decide what tests to use, what is significant as far as the referral question, the complicated nature of people malingering, the dynamic nature of it, and how that can be really challenging to sort that out. I've seen a lot of unfortunately bad evaluations over the years, of people just not doing their homework, or people who don't have the qualifications to do some of these forensic assessments, and the court

still seems to allow them surprisingly. So, I think an outlined way of assessing malingering is important for a standard of care for forensic psychological evaluation.

3. What guides you to use psychological testing when conducting personal injury and/or competency evaluations? When you use testing, how do you construct the battery of tests? Do you have a fixed battery or do you customize a flexible battery?

I usually always do psychological testing in my evaluations. I find that often times, when I'm asked to do evaluations, it's because they want a psychologist who can do certain psychological testing to sort things out. Some of the competency evaluations maybe not so much because they're very straightforward, and in my opinion there aren't great psychological tests to assess competency. However, with most competency evaluations in context of a state hospital where I work, malingering and intelligence testing has been done already. But, if I'm in my private practice, I will always do psychological testing to look at the person's cognitive ability, any sort of feigning that may be going on with the individual, and maybe have a general sense of their personality (what kind of individual they are – e.g. in personal injury evaluations, I like to give personality measures to see if it's in their nature to try and exaggerate, or to try to deceive a situation).

Sometimes, it's just a matter of time in a situation (e.g., how much time to I have to do an evaluation). Depending on the time I have to conduct the evaluation, I may choose abbreviated measures versus a full version of something. But, I rarely have a fixed battery that I do.

4. What are the major ethical challenges or dilemmas you face when conducting personal injury and/or competency evaluations?

Well, I guess one of the biggest issues that I face with evaluations is balancing ethical dilemmas. For example, preserving test security and the needs of the court. A lot of times, defense attorneys want me to send copies of raw data to the courts, so that the court can look at the raw data. So, the importance of educating the legal side of forensics about the implications of sending raw data is an issue.

I'm also struck when individuals admit to committing crimes in competency evaluations and you don't ask them to tell you this information and the importance of not including that in reports. For example, any admission of guilt - it's important to uphold the context of 'what are they saying you did, versus what did you do' and making sure you balance your role and to not step outside of your role. It's important to make sure that the specific task that you've been asked to do, you just follow that and not deviate from it.

5. How might these challenges be addressed in a standard of care?

What comes to mind is the Slick criteria for malingering in neuropsychology, which is something that would be helpful in our field. For example, it would be helpful to have some sort of algorithm for doing evaluations, e.g. when you do this type of evaluation you start here, and this brings you to here. Like a decision tree type situation, and work your way down. A standard of care is something I feel is really important for any type of clinician. It's important to be well versed in all types of assessment if you may have to conduct them. It's important to stay up-to-date on current practice, research, and the utility of certain instruments (good and bad), and educating the court based on the field's current knowledge as you progress in the field.

6. What role do diversity factors play in forensic evaluations and how are they addressed?

I find these challenges come up a lot. Especially in private practice, it's not always as clear cut because I may only have three to four hours to meet with someone in the community. However, with the luxury of time in state hospitals it's easier. Some issues that readily come to mind, are people that don't speak English. For example, I did some Miranda evaluations with a number of individuals from other countries that had no formal schooling and it was difficult to assess one's intelligence in relationship to understanding Miranda rights when they're from other countries. Also, with testing – if you have someone who's mentally retarded, can you give them certain intelligence tests. And how do you know if they're faking? Or not faking being mentally retarded? So it becomes kind of a circular argument and you do the best you can, of course.

Another huge thing I see a lot is, no matter what opinion you come up with, often times another expert will then come in and give a diametrically opposed argument to your argument. And sometimes, with the same data – which is a real problem for a standard of care. How can we both come up with a different opinion with the same data, and seeing the same person? That's a huge issue that makes psychology look really silly in court. In the court, their laws are very black and white and psychology is more gray and judges they don't wanna hear about gray. They want to know yes, or no. And then if an expert does a house-tree-person and makes a decision based on how the individual drew their tree that they should go with this parent or that parent makes us look very silly. Face validity.

So this comes up a fair amount with people from other countries in our American criminal justice system.

7. Do you assess for feigning and exaggeration? When, why, and how?

Yes, in any sort of forensic question – I'll address feigning. Usually at the outset of the evaluation, I'll assess if the person is being genuine with me. Why? Because, it

is a huge cross-examination issue. For example, when they ask you how do you know that this person is telling you the truth, how do you know that your assessment is accurate? Did you rule that out?

In the state hospital I work at, 20% of individuals are feigning in some way. The importance of sorting out the feigning in different contexts. E.g. are they feigning because they want to come here for certain amenities that we have, or are they feigning to get out of their case. Also, as I said before, there's a significant dynamic nature to feigning. For example, one day they get here, realize we don't have cigarettes, and decide they want to get back to Rikers Island. So, what's important to them in that way.

How? I usually always do a TOMM and a SIRS if I can. I've found that if I'm pressed for time, I'll start with an MFAST to see where I'm at and if the SIRS will be helpful. The SIRS can be time consuming, but I always do a TOMM. In more complicated cases, as far as when I'm looking at cognitive aspects, I'll do a VIP (Validity indicator profile). I find that test to be excellent. Although, sometimes not always jiving with the TOMM as far as results in my experience. Sometimes, I'll do some brief tests, depending on the nature of the evaluation. For example, the Rey 15 item, the Dot Counting test. And, then of course I find doing an MMPI-2-RF to be very helpful as far as the imbedded exaggeration of psychopathological symptoms. So, the definitely the MMPI as far as a personality inventory. We've been using the RF a lot more, because half the questions make a big difference with a lot of these guys. As far as their attention. PAI, I don't find it very helpful for identifying feigners.

8. What role does third party information play when conducting a competency and/or personal injury evaluation? What sources do you typically utilize?

It could be very helpful. It's something that I don't ever want to go into an evaluation with out having third party information. If I know I'll only have a couple of hours with an individual, data that supports or goes against my final opinion could be really helpful. Any, and all information would be helpful (medical, psychiatric, school records).

### Specialized Personal Injury Evaluation Questions

1. Describe your approach and methods to evaluate personal injury.

- What exactly do you do when conducting a personal injury evaluation? Guide me through the different phases, from the referral process to the completion of the assessment. What are some of the core tests that you use?

Starting out, I want to gather as much information as possible, gather any sort of collateral records, really work with the attorney to understand the referral question (e.g., what are you hoping to accomplish by this evaluation?). If it's something

related to one's functioning as a result of some sort of injury, obviously I want to understand their premorbid level of functioning, so how were they before this injury, or accident and how are they functioning currently? I have found that the WTAR is the best measure for assessing one's premorbid level of intelligence. Reading, being one of the most robust predictors of intelligence, being less impacted by neurological insults, or substance abuse (which we tend to see a lot). But, also just collateral. What was this person like? What's their adaptive functioning like? Not doing a formal VINLAND measure, or anything like that, but just finding out how their functioning was before this injury happened. Collateral is really important. I usually do a full WAIS-IV on someone, maybe a TOMM as well, and an MMPI as a standard battery to start out with. But in my experience, with personal injury, most cases get sorted out without going to trial. There are far more issues in court with competency, as far as contesting findings.

## 2. What would a standard of care for a personal injury evaluation entail?

I think similar to any sort of forensic assessment, it is really important to make sure that one is as comprehensive as possible with any sort of collateral information, looking at the significant domains that are imperative to the evaluation (e.g., cognitive functioning, personality, feigning) are all very important to understand the case. I think having a rounded ability to pull from any sort of assessments that may be appropriate to the evaluation is key. You can't be limited in your knowledge of assessments, and how to apply appropriate tests to the nature of the evaluation.

## 3. What do you believe are the most common challenges, omissions, or errors made when psychologists complete personal injury evaluations?

I think, any sort of massaging of data (making data fit into a situation while negating other sort of potential information). I've also seen people do things with data that is not a standard practice, that is not appropriate to be done in certain situations. And, of course you always have to balance out that you did something, it wasn't part of the referral question, you're not trying to hide it, so you need to make a reference of it in the report without going on and on in detail. Sometimes defense attorneys will say, "Well why'd you do this test?" And, it's often challenging in court to explain why you did certain tests and explain how it was helpful in a minor way, but not significantly related to the referral question. The defense attorney will go on and on and say, "Why didn't you explain this in more detail? What are you trying to hide?" So, that's a big challenge.

## 4. How would a standard of care be helpful to you in conducting personal injury evaluations?

Well, currently there's very little as far as a standard of care or any sort of guidelines. I mean there are minimal guidelines such as do no harm, and those types of ethical

issues. But, as far as guiding you through evaluations there's very little. More specific guidelines would be very helpful to more effectively bridge psychology and law. It would be a standard way for the courts to know what is expected when a personal injury evaluation is done and then the expert should comply, or surpass those guidelines. It would minimize the amount of gray area within psychology.

### Specialized Competency Evaluation Questions

#### 1. Describe your approach and methods to evaluate competency.

- What exactly do you do when conducting a competency evaluation? Guide me through the different phases, from the referral process to the completion of the assessment including the level of structure in interviews. Do you follow a standardized format? What are some of the core tests that you use?

Typically, when I've come into doing competency evaluations, it's after an initial competency evaluation has happened, or after an attorney has felt that they couldn't work with this person. So, for me, it's rare to get someone that's fresh off being arrested and then needs a competency evaluation. There's usually some sort of background in this individual before. But, of course, I want to look at any collateral information, any sort of previous 730 evaluations that were done on this individual, any sort of previous psychiatric evaluations, medical records, any sort of current treatment. Also, are they being treated in the setting they're at (e.g., as far as while incarcerated), are they receiving psychiatric medications?

Then, setting up a meeting with the individual. I have a standard interview that I've used over the years that has helped inform me as far as whether someone's competent to stand trial or not. If I don't have this collateral information, then I'll definitely want to do psychological testing. I think an assessment of their intelligence (e.g., things like abstract reasoning, what is their ability to manipulate information, how concrete are), and regarding feigning to see if they are exaggerating their symptoms. And obviously, a really important piece is the clinical interview. I may, or may not do a personality inventory depending on my general sense of what I want to find out.

In private practice, I'll try and get a more historical understanding of the individual than in my position at the state hospital because it's already done.

#### 2. What would a standard of care for a competency evaluation entail?

I think that it's very similar to what I said for the personal injury evaluations in the sense that it's important for someone to have a good understanding of the case law associated with competency to stand trial and also within each of the states. There are some unique precedent cases within New York State that one should have an understanding of in order to properly do a competency evaluation. And, of course

with any sort of assessment you should review collateral records and do any sort of testing that's indicated. But again to have a comprehensive understanding of all of these different instruments that could be applied, or used to help inform the forensic question.

3. What do you believe are the most common challenges, omissions, or errors made when psychologists complete competency evaluations?

Like I said before, massaging of data. Not using collateral sources. Not fulfilling the referral question of assessing competency.

4. Do you express the ultimate opinion in your reports?

Yes, I do. I know there's some issues with that. I feel comfortable weighing in on my opinion. I've been asked to do that when I've been assessed to do an assessment on someone. I know that ultimately the judge determines the answer to those questions. But, I've found that often times judges want to know the ultimate opinion. So, I think it's helpful as far as moving along the process.

5. How would a standard of care be helpful in clarifying the "ultimate issue" issue?

Yes. I think what would be most helpful for any sort of forensic evaluation is to know how certain measures are used in certain settings based on the issues I outlined. For example, is intelligence a factor in this situation? Is culture a factor? And then what do you do? Because you'll see that people don't touch upon a lot of these cross-cultural issues. We're definitely getting better at it as far as the research, but I think there needs to be tons more research on cross-cultural issues and on understanding the culture of the forensic system in general and the unique aspects of these people, and how that can apply to these different evaluations.

6. How would a standard of care be helpful to you in conducting competency evaluations?

Same as I said before – to give the courts a clear picture of what should be expected. Also, the expert has a game plan of what needs to occur within the evaluation.

### Closing Questions

1. How do you define an expert?

Someone who has some unique knowledge in an area based on experience and education. In the context of court, a forensic expert is someone that can help inform the court based on their experience and education.

2. Is there anything else you would like to add?

No.



## APPENDIX I

## Participant 2 Interview Transcript

### Pre-Interview Background Questions

1. Age

- ☐ 22 to 34
- ☐ 35 to 44
- ☒ 45 to 54
- ☐ 55 to 64
- ☐ 65 and Over

2. Gender

- ☒ Male
- ☐ Female

3. Type of degree

- ☐ Psy.D.
- ☒ Ph.D.
- ☐ Ed.D.
- ☐ or other (please specify)

4. State in which you are licensed? New York

5. In what settings have you completed forensic evaluations?

- Criminal? Civil? Private practice? Court-ordered?

Court ordered criminal evaluations in both institutional, Bellevue's Court Clinic and private practice settings; Civil forensic evaluations (including vocational disability) in private practice

6. Do you conduct personal injury evaluations, competency evaluations or both?

Both

7. How many personal injury and/or competency evaluations have you completed?

Hard to estimate, well over 100 personal injury evaluations. Probably closer to 1000 competency evaluations.

### Interview

We will be inquiring about the development of a standard of care. We will not be inquiring about a standard of practice. Definitions are provided below to clarify differences between the two.

### Definitions

**Standard of Practice:** A generally accepted way of doing something in a particular field. It is aspirational in nature and deviation from a standard of practice does not result in civil liability, but may result in sanctions (Heilbrun et al., 2008).

**Standard of Care:** Minimally acceptable standards of professional conduct in a context that is judicially determined by a court of law. Adherence is mandatory and breach of this standard may result in professional liability (Heilbrun et al., 2008). Based on statutes, case law, licensing board regulations, professional ethical codes, consensus of the professional community, and relevant specialty guidelines. A proposed standard of care for forensic mental health assessment includes: a) ethical conduct, b) necessary knowledge of the legal system, c) use of appropriate methodology, d) inclusion of information from a variety of data sources, e) awareness of relevant empirical research, f) proper preparation and presentation of findings to the legal system, and g) adherence to an expected threshold of quality (Conroy, 2006; Goldstein, 2007).

### Semi-Structured Questions

#### General Questions

1. Do you think a standard of care would be beneficial to the field of forensic psychological assessment?

Yes

2. What standards/guidelines do you follow when completing forensic psychological evaluations?

There are no established practice or care standards, and because each case differs, there is no standard answer. In most cases I utilize some form of psychodiagnostic testing, including malingering tests, MMPI-2, etc – but there are certainly cases where testing is unnecessary or inappropriate. Likewise, I typically seek collateral information, both in the form of objective records as well as informants, but again, there are cases where little information is available that can corroborate the person's self-report. The only true "core" requirements that I can think of are that a) an evaluation should be conducted to the best of one's abilities and b) not to misrepresent or overstate the data.

3. What guides you to use psychological testing when conducting personal injury and/or competency evaluations? When you use testing, how do you construct the battery of tests? Do you have a fixed battery or do you customize a flexible battery?

Any decisions about psychological testing are made based on the nature of the case and psycholegal questions at hand. Hence, any battery of tests is intentionally flexible. It would be silly to use tests that have virtually no likelihood of yielding meaningful data simply because they are part of a battery, nor to ignore potentially relevant testing simply because it is not the norm. Most testing is based on the need to clarify a) test-taking style/response bias (e.g., malingering or minimization), b) diagnostic questions, c) cognitive functioning, and d) specific psycholegal issues (e.g., psychopathy).

4. What are the major ethical challenges or dilemmas you face when conducting personal injury and/or competency evaluations?

Objectivity is probably the biggest challenge; there is always a temptation to want to “help” the retaining attorney and it is a constant challenge to remain objective. That’s probably the biggest thing that comes up routinely.

5. How might these challenges be addressed in a standard of care?

I think vigilance is the only solution. I don’t think you can mandate objectivity because bias is not always apparent to the biased clinician. My approach to managing this is to try and conceptualize the case as if I had been retained by the other side. How might I see things or frame things differently?

6. What role do diversity factors play in forensic evaluations and how are they addressed?

Diversity is another constant challenge, though not always apparent to the clinician. Again, vigilance and awareness are the cardinal rules.

7. Do you assess for feigning and exaggeration? When, why, and how?

Yes. I typically administer as much testing as is necessary. A self-report inventory (e.g., PAI, MMPI-2, MMPI-2-RF) is standard for me, unless there is some compelling reason NOT to - e.g., illiteracy, language barrier, logistical constraints (e.g., insufficient time). When appropriate (e.g., when some suspicion is raised) I also consider cognitive testing (e.g., TOMM, VIP) and clinician-rated measures (e.g., SIRS). I try to have whatever testing needs MAY be appropriate available to me whenever I conduct an evaluation.

8. What role does third party information play when conducting a competency and/or personal injury evaluation? What sources do you typically utilize?

Third party info is very useful, but not necessarily in competency evaluations, particularly if the defendant appears competent (unless, by third party, you mean the attorney). When diagnostic questions arise I may seek family members to provide history and/or observations of the defendant. In personal injury cases, third party informants can help validate claims of functional impairment and assess malingering (e.g., by providing evidence of higher functioning outside of the litigation context).

### Specialized Personal Injury Evaluation Questions

1. Describe your approach and methods to evaluate personal injury.

- What exactly do you do when conducting a personal injury evaluation? Guide me through the different phases, from the referral process to the completion of the assessment. What are some of the core tests that you use?

Here are my steps, beginning with pre-evaluation preparation:

1. Discuss case with attorney; negotiate fee and arrangements
2. Review available records

Steps During the Evaluation:

3. Informed consent
4. Social/personal history (including medical/psychiatric/educational/vocational – very detailed)
5. Detailed review of incident(s) that led to the injury
6. Mental status exam
7. Psychological testing (definite MMPI or related test; cognitive effort and/or general cognitive functioning tests – like WAIS-IV) as appropriate
8. Follow-up questions

After the Evaluation:

9. Call collateral sources (if applicable)
10. Score, interpret psychological tests (note, this usually precedes #7)
11. Contact attorney to discuss case formulation, determine whether report is needed
12. Prepare report (if requested by attorney)
13. Deposition
14. Testimony (if applicable)

2. What would a standard of care for a personal injury evaluation entail?

I'm not sure I fully understand this question, but I think what you mean is which, if any, of the above steps should occur in any personal injury evaluation. I would argue

that each one is critical – or at least potentially critical, and therefore must be considered as part of the standard of care.

3. What do you believe are the most common challenges, omissions, or errors made when psychologists complete personal injury evaluations?

Placing too much weight on the opinion of the referring attorney; trusting the patient's report without considering (i.e., thoroughly evaluating) the possibility of exaggeration/distortion; insufficient attention to history (crucial to differentiate reactions to the injury from pre-existing problems/conditions).

4. How would a standard of care be helpful to you in conducting personal injury evaluations?

I don't think it would help me, in my work, but there are many clinicians who do shoddy personal injury evaluations (we call them ambulance chasers) – it probably wouldn't help those clinicians either, because the nature of their practice is to do cheap, shoddy work but high volume. It would, however, help attorneys identify shoddy forensic work and, by extension, would bolster the credibility of our profession.

### Specialized Competency Evaluation Questions

1. Describe your approach and methods to evaluate competency.

- What exactly do you do when conducting a competency evaluation? Guide me through the different phases, from the referral process to the completion of the assessment including the level of structure in interviews. Do you follow a standardized format? What are some of the core tests that you use?

Pre-evaluation preparation:

1. Discuss case with attorney (e.g., basis for competency evaluation); negotiate fee and arrangements (including determining whether attorney will/should be present for the evaluation)
2. Review available records

Steps During the Evaluation:

3. Informed consent
4. Relevant background information; much more abbreviated than in personal injury evaluation
5. Mental status exam
6. Psychological testing, if necessary; but only used in a small minority of competency evals

## 7. Discussion of case; assessment of competency-related abilities

After the Evaluation:

Call collateral sources (if applicable)

Score, interpret psychological tests (note, this usually precedes #7)

Prepare report (if requested by attorney)

Testimony (if applicable)

## 2. What would a standard of care for a competency evaluation entail?

I don't know that there really is a standard of care for competency, unless it includes

a) consideration (but not necessarily formal testing) of malingering; b) discussion with attorney of concerns; and c) consideration of conducting the evaluation with the attorney present. Everything else seems too highly variable (e.g., testing may or may not be appropriate; collaterals may or may not be relevant).

## 3. What do you believe are the most common challenges, omissions, or errors made when psychologists complete competency evaluations?

Insufficient exploration of competency itself. Many clinicians ask the basic questions (what does a judge do?) but fail to pursue more complex cognitive functioning (is there a rational decision process at work?). Many clinicians also fail to consider the attorney/client relationship and simply presume that the defendant can work with the attorney.

## 4. Do you express the ultimate opinion in your reports?

Depends on a) the report (evaluation type) and b) my level of certainty. Typically, I will focus on the elements of competency (ability to assist, rational and factual understanding of the proceedings) and then conclude with a statement as to the ultimate issue (which is, in my experience, usually demanded by the judge and/or the statute that underlies the evaluation).

## 5. How would a standard of care be helpful in clarifying the "ultimate issue" issue?

It would eliminate confusion as to whether ultimate issue testimony is appropriate.

## 6. How would a standard of care be helpful to you in conducting competency evaluations?

I don't think it would help me, but again, it might help less experienced clinicians.

Closing Questions

1. How do you define an expert?

Someone with specialized knowledge and experience on the specific topic at issue.

2. Is there anything else you would like to add?

Not that I can think of.



## APPENDIX J

## Participant 3 Interview Transcript

## Pre-Interview Background Questions

## 1. Age

- ☐ 22 to 34  
☒ 35 to 44  
☐ 45 to 54  
☐ 55 to 64  
☐ 65 and Over

## 2. Gender

- ☐ Male  
☒ Female

## 3. Type of degree

- ☐ Psy.D.  
☒ Ph.D.  
☐ Ed.D.  
☐ or other (please specify)

## 4. State in which you are licensed?

New York

## 5. In what settings have you completed forensic evaluations?

- ☒ Criminal? ☐ Civil? ☐ Private practice? ☐ Court-ordered?

All

## 6. Do you conduct personal injury evaluations, competency evaluations or both?

Personal Injury

## 7. How many personal injury and/or competency evaluations have you completed?

50 personal injury

Interview

We will be inquiring about the development of a standard of care. We will not be inquiring about a standard of practice. Definitions are provided below to clarify differences between the two.

Definitions

**Standard of Practice:** A generally accepted way of doing something in a particular field. It is aspirational in nature and deviation from a standard of practice does not result in civil liability, but may result in sanctions (Heilbrun et al., 2008).

**Standard of Care:** Minimally acceptable standards of professional conduct in a context that is judicially determined by a court of law. Adherence is mandatory and breach of this standard may result in professional liability (Heilbrun et al., 2008). Based on statutes, case law, licensing board regulations, professional ethical codes, consensus of the professional community, and relevant specialty guidelines. A proposed standard of care for forensic mental health assessment includes: a) ethical conduct, b) necessary knowledge of the legal system, c) use of appropriate methodology, d) inclusion of information from a variety of data sources, e) awareness of relevant empirical research, f) proper preparation and presentation of findings to the legal system, and g) adherence to an expected threshold of quality (Conroy, 2006; Goldstein, 2007).

### Semi-Structured Questions

#### General Questions

1. Do you think a standard of care would be beneficial to the field of forensic psychological assessment?

Yes

2. What standards/guidelines do you follow when completing forensic psychological evaluations?

I think some of the standards that I follow routinely are:

- In terms of ethics: explaining confidentiality to the patient
- In forensics, making sure the person knows the guidelines of who the patient is, who the evaluator is, what our role is, and where the information is going (to court)
- Conducting a comprehensive assessment, which includes getting information from a variety of different sources.
- Always meeting with the patient. I never give an opinion, or write a report on someone that I've never met, or at least attempted to meet.
- Using testing appropriately
  - If it's appropriate, use testing that is research based
  - Use more than one measure when testing a construct
    - e.g. I wouldn't give one malingering measure, and say the person is malingering
  - Don't over generalize from test results

3. What guides you to use psychological testing when conducting personal injury and/or competency evaluations? When you use testing, how do you construct the battery of tests? Do you have a fixed battery or do you customize a flexible battery?

As a routine standard, I'm usually inclined to use testing. For example, if there is a question about the person's intellectual functioning, I would do cognitive testing as well as malingering assessment.

Choosing what tests to give has a lot of professional responsibility ethics involved. I like to give about three tests for each construct I am measuring. My basic battery for measuring different constructs are fixed based on research, what stands up in court, and my own clinical experience. From there, I use a flexible battery that flows from the referral question.

4. What are the major ethical challenges or dilemmas you face when conducting personal injury and/or competency evaluations?

Confidentiality and informed consent is not necessarily a challenge, but something important that I feel is really important. It's important for the client to understand that I'm not their doctor, I'm not treating them, and that I'm using this information to help a judge make a legal opinion about them.

5. How might these challenges be addressed in a standard of care?

It should be a standard to inform clients what the purpose of the evaluation is, where the information is going, and make it clear that we are not treating them but that we're essentially working for the court.

6. What role do diversity factors play in forensic evaluations and how are they addressed?

I've worked with people from what seems like every culture of the world. So, language is a large diversity factor. If someone I am evaluating doesn't speak a language I do, it is their right to have a translator, so I would have to coordinate that. Also, it's imperative for the evaluator to be culturally competent to be able to tease apart symptoms of a mental illness, versus cultural idioms an individual may present with. For example, religious delusions versus common religious beliefs. Sometimes it's hard to tease those apart.

7. Do you assess for feigning and exaggeration? When, why, and how?

Yes, always. I would use a basic fixed battery with cognitive measures and measures to assess psychopathology.

8. What role does third party information play when conducting a competency and/or personal injury evaluation? What sources do you typically utilize?

Review their medical record. Everyone the person has/currently receives treatment from in the community. Check rap sheet, family, and interpersonal contacts.

### Specialized Personal Injury Evaluation Questions

1. Describe your approach and methods to evaluate personal injury.

- What exactly do you do when conducting a personal injury evaluation? Guide me through the different phases, from the referral process to the completion of the assessment. What are some of the core tests that you use?

From the referral, I start out:

- Gathering as much information as possible. Gathering a psychiatric history, why they're being referred for a personal injury evaluation, prior medical/psychiatric treatment, what symptoms are they presenting with (duration of symptoms historically to current presentation of symptoms)
- Collateral information.
- Psychological testing: cognitive functioning (WAIS-IV), malingering (TOMM, SIRS, MFAST), personality (MMPI-II, PAI)
- Interview
  - My own interview guideline
- Structured written report

2. What would a standard of care for a personal injury evaluation entail?

It would speak to our ethical responsibilities to be competent in conducting these evaluations. In addition to being a licensed psychologist/psychiatrist, it's important to have knowledge of the legal process, and knowledge of laws in the jurisdiction you're doing the evaluation.

Only use psychological tests that are well known in the literature, and related to the question being asked.

In terms of the evaluation itself...it should be a standard to gather multiple sources of information. Also, it should be a standard to meet with the client, or make every reasonable attempt to do so.

3. What do you believe are the most common challenges, omissions, or errors made when psychologists complete personal injury evaluations?

One challenge is that people can be quite mentally ill, but it may have nothing to do with their case and it's often a challenge to tease apart what affects the referral question, and what does not.

The cultural piece is a challenge sometimes. Distinguishing symptoms from cultural beliefs, or attitudes.

A common omission is to fail to consider malingering.

An error would be to say that someone is mentally retarded, or malingering without doing appropriate psychological testing to back this up.

4. How would a standard of care be helpful to you in conducting personal injury evaluations?

As a professional guideline it would be very useful. These evaluations have a lot of weight in someone's life, so it's important to have a standard of care that outlines everything an evaluator should do, outlines what a competent evaluator looks like (degree, education etc),

It would help justify for forensic psychologists that we have the specialized knowledge to do something like this.

#### Closing Questions

2. How do you define an expert?

Someone who knows much more about a certain subject than the average person.

2. Is there anything else you would like to add?

No.

## APPENDIX K

## Participant 4 Interview Transcript

## Pre-Interview Background Questions

## 1. Age

- ☐ 22 to 34
- ☐ 35 to 44
- ☐ 45 to 54
- ☒ 55 to 64
- ☐ 65 and Over

## 2. Gender

- ☐ Male
- ☒ Female

## 3. Type of degree

- ☐ Psy.D.
- ☒ Ph.D.
- ☐ Ed.D.
- ☐ or other (please specify)

## 4. State in which you are licensed?

New York

## 5. In what settings have you completed forensic evaluations?

- Criminal? Civil? Private practice? Court-ordered?

All

## 6. Do you conduct personal injury evaluations, competency evaluations or both?

Personal Injury

## 7. How many personal injury and/or competency evaluations have you completed?

200 personal injury

## Interview

We will be inquiring about the development of a standard of care. We will not be inquiring about a standard of practice. Definitions are provided below to clarify differences between the two.

## Definitions



**Standard of Practice:** A generally accepted way of doing something in a particular field. It is aspirational in nature and deviation from a standard of practice does not result in civil liability, but may result in sanctions (Heilbrun et al., 2008).

**Standard of Care:** Minimally acceptable standards of professional conduct in a context that is judicially determined by a court of law. Adherence is mandatory and breach of this standard may result in professional liability (Heilbrun et al., 2008). Based on statutes, case law, licensing board regulations, professional ethical codes, consensus of the professional community, and relevant specialty guidelines. A proposed standard of care for forensic mental health assessment includes: a) ethical conduct, b) necessary knowledge of the legal system, c) use of appropriate methodology, d) inclusion of information from a variety of data sources, e) awareness of relevant empirical research, f) proper preparation and presentation of findings to the legal system, and g) adherence to an expected threshold of quality (Conroy, 2006; Goldstein, 2007).

### Semi-Structured Questions

#### General Questions

1. Do you think a standard of care would be beneficial to the field of forensic psychological assessment?

Yes

2. What standards/guidelines do you follow when completing forensic psychological evaluations?

I make every attempt to meet the client in-person. I have a standard clinical interview with a set of questions, but I always embellish it based on the referral question presented to me. Also, collateral sources and, psychological testing – as needed.

3. What guides you to use psychological testing when conducting personal injury and/or competency evaluations? When you use testing, how do you construct the battery of tests? Do you have a fixed battery or do you customize a flexible battery?

I have a flexible battery that I work from depending on the referral question. Every case is uniquely different, and I can't imagine a fixed battery approach for personal injury or competency evaluations. Most testing I do for forensics is when the question involves: cognitive abilities, psychopathy, malingering, or diagnostic considerations.

4. What are the major ethical challenges or dilemmas you face when conducting personal injury and/or competency evaluations?

Acknowledging the limits of my data and conclusions. Our job in these evaluations is to assist the judge. I always want the retaining attorney to be satisfied. But, it doesn't always happen and it's important to stand by the ethics of our profession and acknowledge the inherent limitations in any evaluation.

5. How might these challenges be addressed in a standard of care?

A standard of care could outline not only for psychologists, but also for attorneys what the expectations are for these evaluations. Having a delineated guideline for evaluations would help align forensic psychology more to the black and white personality of the law. Our field still has a long way to go in gaining further credibility with the legal system. I think a well-designed standard of care could help with this.

6. What role do diversity factors play in forensic evaluations and how are they addressed?

Diversity factors are major. But, you have to have a certain level of advanced awareness to be able to know what to inquire about. A standard of care could be very helpful to lay out minimally acceptable standards for many diversity related themes. For example: What to do when you need to conduct the evaluation via translator? What assessment methodologies are culturally normed for your client?

7. Do you assess for feigning and exaggeration? When, why, and how?

Always. I always administer a self-report inventory like the PAI, the MMPI-2, the MMPI-2-RF. But, sometimes time is not always on my side, and it's important to note in the report why I didn't administer a self-report measure, and what it could have added to the evaluation. Sometimes cognitive testing if someone's intelligence is at question. And always use gender/culture/language/age normed assessments for your client. Otherwise it's useless.

8. What role does third party information play when conducting a competency and/or personal injury evaluation? What sources do you typically utilize?

Collateral information is key in both types of evaluations. Often times collateral information has helped me pinpoint other areas I need to test more thoroughly. Medical records, family/friends, treatment providers, RAP sheets.

### Specialized Personal Injury Evaluation Questions

1. Describe your approach and methods to evaluate personal injury.

- What exactly do you do when conducting a personal injury evaluation? Guide me through the different phases, from the referral process to the completion of the assessment. What are some of the core tests that you use?
1. Reason for Referral:
    - Identify the reason for referral. Make sure I understand what the attorney wants me to answer.
    - Make every attempt to meet client in person.
    - Be prepared: interpreter? Educate myself on the case before-hand, review records, contact collaterals after the interview.
  2. Clinical Interview:
    - Relevant Prior History:
      - Psychosocial development/relationships/education
      - Employment history, dynamics, performance, and problems (prior to injury)
      - Family history
      - Psychiatric history (evaluation, testing, diagnoses, treatment, hospitalizations)
      - Substance abuse history
      - Criminal history, if relevant
      - Medical history
    - Data Related to the Alleged Injury:
      - Description of the injury in context
        - Jurisdictions differ on what types of injury entitle a plaintiff to compensation. For example, some may consider a foreseeable mental injury to a bystander in the zone of danger, but others may require a direct physical impact. So be sure to capture the details of the injury. If the facts of the injury are in doubt, you may need to provide different opinions that address the different factual scenarios.
      - Subsequent History:
        - Treatment and work-up
        - Concurrent illnesses
        - Subsequent functioning and changes in lifestyle
        - Details of current job/family dynamics, expectations, performance, and accommodations
      - Mental Status Examination
      - Further studies:
        - Consider laboratory and other medical studies, psychological and neuropsychological testing, malingering testing, vocational evaluation, or functional impairment testing
      - Diagnosis

- Formulation
  - Clinical formulation of illness/injury
  - Explain the diagnoses you have made, including pre-existing illnesses. Summarize the course of illness without getting into the causal connection.
- Causal connection:
  - Discuss etiology, considering potential alternative causes, pre-existing conditions, other stresses, role of personality, and secondary gain. Also, it may be relevant if the plaintiff's own behavior contributed to the injury.
  - Did the injury cause a new illness or exacerbate an old one?
  - Would the illness have occurred at all in the absence of the injury? What would have been the course of pre-existing illness in the absence of the injury? Would the injury have affected an ordinarily sensitive person, or was the plaintiff uniquely vulnerable?
- Prognosis:
  - The following factors may help the fact finder determine the appropriate level of compensation.
  - Treatment needs and duration?
  - Impact of disability on employment/earnings, family/relationships, lifestyle?
  - Is disability partial or total? Is the injury permanent, or is improvement expected?
- State my opinion:
  - It is my opinion, with a reasonable degree of certainty, that \_\_\_\_\_ did sustain mental or emotional injuries as a result of \_\_\_\_\_.
  - Make sure to list limits of confidentiality.
  - Make sure to list dates met with client and amount of time.
  - Was an interpreter need? List name and contact information.
  - Was a psych assistant used for scoring? List name, degree etc.

2. What would a standard of care for a personal injury evaluation entail?

Above

3. What do you believe are the most common challenges, omissions, or errors made when psychologists complete personal injury evaluations?

- Failing to communicate the purpose of the evaluation/report/testimony to the client.
- Failing to answer the referral question.
- Failing to consider malingering.
- Failing to consult collateral sources.
- Not using a researched scoring method for an assessment.
- Using assessments that are not normed for the client's demographics.

-Not delineating when you use a psych assistant, or someone other than yourself for administration or scoring of assessments. Always add a qualifier with these details.

4. How would a standard of care be helpful to you in conducting personal injury evaluations?

It would help me by helping our field identify itself with a structured set of guidelines for important evaluations that affect people's life. Without a standard of care, our credibility will constantly be questioned in the courtroom. A standard of care could be helpful in so many ways. It will identify for beginning psychologists what the expectations are for evaluations, it will keep expert psychologists up-to-date as the standard of care would change with the times (like the forensic guidelines do) and it would level the footing with attorney's structured way of thinking.

#### Closing Questions

1. How do you define an expert?

Someone who has specialized education, experience, and demonstrated knowledge in the field.

2. Is there anything else you would like to add?

No.

## APPENDIX L

## Participant 5 Interview Transcript

### Pre-Interview Background Questions

1. Age

- ☐ 22 to 34
- ☒ 35 to 44
- ☐ 45 to 54
- ☐ 55 to 64
- ☐ 65 and Over

2. Gender

- ☐ Male
- ☒ Female

3. Type of degree

- ☐ Psy.D.
- ☒ Ph.D.
- ☐ Ed.D.
- ☐ or other (please specify)

4. State in which you are licensed?

Illinois

5. In what settings have you completed forensic evaluations?

- Criminal? Civil? Private practice? Court-ordered?

Courts at the county level and private practice setting

Do you conduct personal injury evaluations, competency evaluations or both?

Competency evaluations

How many personal injury and/or competency evaluations have you completed?

30

### Interview

We will be inquiring about the development of a standard of care. We will not be inquiring about a standard of practice. Definitions are provided below to clarify differences between the two.

### Definitions

Standard of Practice: A generally accepted way of doing something in a particular field. It is aspirational in nature and deviation from a standard of practice does not result in civil liability, but may result in sanctions (Heilbrun et al., 2008).

Standard of Care: Minimally acceptable standards of professional conduct in a context that is judicially determined by a court of law. Adherence is mandatory and breach of this standard may result in professional liability (Heilbrun et al., 2008). Based on statutes, case law, licensing board regulations, professional ethical codes, consensus of the professional community, and relevant specialty guidelines. A proposed standard of care for forensic mental health assessment includes: a) ethical conduct, b) necessary knowledge of the legal system, c) use of appropriate methodology, d) inclusion of information from a variety of data sources, e) awareness of relevant empirical research, f) proper preparation and presentation of findings to the legal system, and g) adherence to an expected threshold of quality (Conroy, 2006; Goldstein, 2007).

### Semi-Structured Questions

#### General Questions

1. Do you think a standard of care would be beneficial to the field of forensic psychological assessment?
2. Yes
3. What standards/guidelines do you follow when completing forensic psychological evaluations?

Standards of the forensic guidelines, APA ethics code, professional standards that may be above and beyond that

4. What guides you to use psychological testing when conducting personal injury and/or competency evaluations? When you use testing, how do you construct the battery of tests? Do you have a fixed battery or do you customize a flexible battery?

More flexible, it's customized dependent on the referral question. Let's see. Oh, one thing I forgot to. Sometimes neuropsych testing is relevant if there is an issue of a brain issue or something. But, what really guides me is the suspected reason for the person's possible incompetence. So, if the person has a documented history of mental illness and it's a psychotic disorder or something, I'm typically going to be focusing my assessment around that particular issue. If there is a question when I am interact with the person and they seem like they might be of limited intellectual functioning, I'll certainly add that, a test of intellectual functioning. But, for someone



whose very, you know, their verbal fluency is at a high level and they appear to be functioning at least adequately I may not give an IQ test if that does not appear to be an issue. Yeah, it really just depends on the referral questions and the specific concerns and anything that may come up in the course of my evaluation.

5. What are the major ethical challenges or dilemmas you face when conducting personal injury and/or competency evaluations?

Um, I think one of the biggest things that psychologists tend to deal with is a feeling of pressure from the referral source. Especially private practice psychologists. Often times there's limited information that will be provided for one side or the other. So, if for example a defense attorney is referring someone to you with the hopes that they will be found incompetent, they may provide a certain subset of information to you and then you're working with what you're provided. So, I think one of the biggest responsibilities we have is to make sure we collect our own information as well. Get releases if the person is willing to sign a release, get additional sources of information that will help you get more collateral information that is not submitted by any party that has a particular interest in the outcome of the evaluation.

6. How might these challenges be addressed in a standard of care?

I think the standard of care could require that at least an effort be made to seek collateral information. Because in my opinion, the collateral information is a pretty key important piece and sometimes it's not available, sometimes there are no records, or sometimes the person is not willing to sign a release. And you know you at least made an effort, but you don't have the benefit of having that information, you have to go off of what you're seeing in front of you, but I think at least making an effort and making a requirement that that be documented would be helpful.

7. What role do diversity factors play in forensic evaluations and how are they addressed?

Yeah, I think one important way I've seen that comes up is bilingual or multicultural defendants. In the clinic that I used to work at we would use interpreters as needed, but I think even doing an evaluation through an interpreter can be very difficult because it's a filter that you don't have when working with someone who speaks the same language as you and it's relying on interpretation of another individual of what that person's saying. And for example, if someone is psychotic and their speech is disorganized and maybe not quite adding up to a full sentence or making that sentence coherent, sometimes the interpreters tend to just fill in the blanks, just mentally, because that's what people try to do. Their brains try to do. And that can really skew the results of the evaluation. I think also diversity can play a role in. It's important to establish rapport with the person you're evaluating. And I think if you're not appreciating the culture that they're coming from or if they're not feeling

understood that can make it challenging as well. How they're addressed I think is practicing culturally sensitive psychology and evaluation practices. Making sure if there is a language issue, doing everything you can to get a full understanding, maybe even talking with the interpreter. Asking any questions you have about the person's structure, word structure or sentence structure.

8. Do you assess for feigning and exaggeration? When, why, and how?

Yes, I don't do it every time, but if there is any question about it, yes. Typically the M-FAST or the SIRS. I have also used the Rey to assess for memory malingering, the TOMM. When I would do it is clearly if the person is presenting in a way that would render them incompetent. If the person is answering everything in a coherent fashion and in a way that suggests they understand and it doesn't appear that they're motivated to be found incompetent then there is no reason in my opinion to do it. Yeah, if there is any question about the symptoms that are being reported not being genuine then I would assess for it.

9. What role does third party information play when conducting a competency and/or personal injury evaluation? What sources do you typically utilize?

Court orders, referral forms, verbal contact with the attorney, medical records, psychological records, hospital records, and I've used collateral sources, like getting a release to speak with family members. Speaking directly with treating psychologists or psychiatrists. Any past evaluations also are helpful. And what role does it play? I think it plays a very important role. The individual you're evaluating may not be able to give you a good history depending on their functioning and they may be motivated in one way or another to present in a certain way as well, so I think it is very important to be able to corroborate the information you're getting or point out any contradictions.

### Specialized Competency Evaluation Questions

1. Describe your approach and methods to evaluate competency.

- What exactly do you do when conducting a competency evaluation? Guide me through the different phases, from the referral process to the completion of the assessment including the level of structure in interviews. Do you follow a standardized format? What are some of the core tests that you use?

Look at the information provided to me, first thing look at the referral information, and court order if there is one, typically after that I consult with the referring source, which would usually be a defense attorney or prosecuting attorney, sometimes another party and clarify the referral question, specifically, what raised their concern in the first place, that the person may not be competent to stand trial, typically there has been some sort of behavior that has been exhibited in either their interactions with

the attorney or in the court, or maybe some other sources of information that raised concern, so I would ask them what led them to have a bona fide doubt about the person's competence to stand trial. I would collect that information, read any background records that I get. Typically the referral would come with some, either police reports, hospital records, any mental health records, so I review as many records as I get on the front end. Um, then schedule the appointment with the person to evaluate them. That could be in a correctional setting. In my previous work, it could be in a private office as well. So upon meeting the person, I obtain informed consent. Make sure it's clear on the outset how the report is going to be used, how the information we discuss is going to be used. Conduct the evaluation from there. The methods I use in the evaluation depend really on the referral question and the concerns. So, for example, if there are concerns the person may not understand the court proceedings because of mental retardation, I would definitely conduct a WAIS or a WISC dependent on the person's age and usually a structured competency to stand trial interview. I do that for everybody and that includes questions about court proceedings, the significant players in the court room, judge, prosecuting attorney, defense attorney, the procedures themselves. So, I would make sure the person understands the adversarial nature of the court system. And the fact that because of the charges against them there are some people there that are trying to get a conviction and trying to get them punished for their actions. And there are other people who help them and that they can distinguish who is who. Assess their understanding of the need for behavioral control in the courtroom. Assess their willingness and ability to cooperate in their own defense with their attorney. So, the structured interview covers most of these areas, all these areas, plus a few more. Let's see. I've used an instrument called the competency screening test, just as a guideline to get more information. It's an incomplete sentence measure and it includes sentences such as, "Jack feels that the judge blank." and then the person fills in the rest. Just to get at their attitudes and their understanding. Um, what else. If the question is their mental illness and if the mental illness could potentially interfere with their competence then I would assess for that in whatever way I am able to. Typically it would be the PAI, I used could be at times I use a substance abuse screening measure, like the SASI, depending on whether or not that's an issue. Just to tease out what all the issues are that are contributing to the person's ability or inability to go forward as a defendant. Um, and I pick and choose these depending on the nature of the referring question. If the person is incarcerated I collect any records from the facility that they're at. In this type of setting I would collect as much information from correctional staff and or medical providers as I could. Get releases from the person when I see them to get, you know any additional records. Speak to other people in the person's life. A lot of times speaking to family members can be helpful to discover the course and nature of the symptoms of the illness. I think that is pretty much it in terms of assessment. And then, you know, I compile all the information and make sure I am operating under the statue of the jurisdiction I am under. So, in Illinois I would use the Illinois statues and their definition of

competency to stand trial and formulate an opinion based on all the information I collected. Write a report and submit it to the court.

2. What would a standard of care for a competency evaluation entail?

What would it entail? It's difficult because testing has to be kind of customized, at least in my opinion. There shouldn't necessarily be a standard set of tests or type of tests even. But, maybe the standard of care, like I said before, I think it should include an attempt to gain collateral information, I think it should include contact with the referral source, like the referring attorney. I think a lot of people are afraid to make those type of contacts. I think the court is intimidating to certain psychologists; maybe they're not so familiar with it. But, really communicating at the front end can be really helpful in understanding what's going on and what the concerns are. You know, I think the general areas of testing should be included, in that, if appropriate. I think it would have to be open ended. You know, if appropriate IQ testing should be done. If appropriate, personality testing or substance-related testing or malingering, but I don't think those need to be absolutes because I think it would create a lot of extra unneeded testing that would not be worthwhile.

3. What do you believe are the most common challenges, omissions, or errors made when psychologists complete competency evaluations?

Not getting collateral information. I've seen some evaluations where psychologists are not appearing to assess for the issue at hand if that makes sense. The person may be giving a Rorschach or a TAT or some other projective personality measure when the issue is the person's understanding of the court system and you know some of the testing doesn't seem to really match the information that would be helpful in answering that question. I have even seen some where there is no real conclusion reached. And there are times, I think, to be fair when you can't reach a conclusion because you simply don't have enough information or the person isn't cooperating with the evaluation I've seen some where the person refuses to speak at all and it's really difficult to evaluate if you have no additional information of what's going on with the person. But, I think just procedurally that the psychologists understand what they're evaluating and that they use the appropriate procedures. And not weigh too heavily on one or the other.

4. Do you express the ultimate opinion in your reports?

Yes

5. How would a standard of care be helpful in clarifying the "ultimate issue" issue?

I do think it is helpful for psychologists, in fact I've been asked, our agency has been asked, specifically by judges to do that, to comment on other legal forensic issues as

well. But I think especially when, so for example if you have, some cases are really clear cut one way or the other. The person is clearly incompetent and in some the person is clearly competent. But in some cases they are sort of borderline and to leave it up to the court to interpret all your test data and to figure out where the person lies on that continuum is irresponsible in my opinion. I think it's really you're responsibility as a psychologist to follow up with all the testing and all the information gathering you've done to tie it all together and offer the opinion. I mean the court can go against it if they disagree, if they have additional information or if they have another expert that says something different. It's up to them to weigh that at that point. I don't think it's responsible to leave it up to the Court to interpret your test data and your interview data for you.

6. How would a standard of care be helpful to you in conducting competency evaluations?

I would be happy doing them the way I do them. I would like to think that I am doing them in a responsible and thorough way, but if there was anything else that came up that was determined to be helpful, of course I would be open to looking at that standard of care and following it. So I think it would be helpful just to have it outlined. I think I would probably be doing everything that needs to be done anyway, is my thought, but if not I would certainly follow it.

### Closing Questions

1. How do you define an expert?

Someone who has training and experience in forensic evaluation, I mean in this context, I assume you're asking, someone who has had supervised training in competency evaluations and has experience conducting them. You know, has a Ph.D. or Psy.D. in psychology, clinical psychology, and a license and maintains their license without issue. Yeah, I think that's pretty much it.

2. Is there anything else you would like to add?

I don't think so. Very thorough.

## APPENDIX M

## Participant 6 Interview Transcript

### Pre-Interview Background Questions

1. Age

- ☐ 22 to 34
- ☒ 35 to 44
- ☐ 45 to 54
- ☐ 55 to 64
- ☐ 65 and Over

2. Gender

- ☐ Male
- ☒ Female

3. Type of degree

- ☒ Psy.D.
- ☐ Ph.D.
- ☐ Ed.D.
- ☐ or other (please specify)

4. State in which you are licensed?

Massachusetts

5. In what settings have you completed forensic evaluations?

- Criminal? Civil? Private practice? Court-ordered?

Criminal, court-ordered

Do you conduct personal injury evaluations, competency evaluations or both?

Competency evaluations

How many personal injury and/or competency evaluations have you completed?

A few hundred competency screening evaluations. They weren't the 15 to 20 page reports we write here. Of the full reports I would say 100s.

### Interview

We will be inquiring about the development of a standard of care. We will not be inquiring about a standard of practice. Definitions are provided below to clarify differences between the two.

## Definitions

**Standard of Practice:** A generally accepted way of doing something in a particular field. It is aspirational in nature and deviation from a standard of practice does not result in civil liability, but may result in sanctions (Heilbrun et al., 2008).

**Standard of Care:** Minimally acceptable standards of professional conduct in a context that is judicially determined by a court of law. Adherence is mandatory and breach of this standard may result in professional liability (Heilbrun et al., 2008). Based on statutes, case law, licensing board regulations, professional ethical codes, consensus of the professional community, and relevant specialty guidelines. A proposed standard of care for forensic mental health assessment includes: a) ethical conduct, b) necessary knowledge of the legal system, c) use of appropriate methodology, d) inclusion of information from a variety of data sources, e) awareness of relevant empirical research, f) proper preparation and presentation of findings to the legal system, and g) adherence to an expected threshold of quality (Conroy, 2006; Goldstein, 2007).

## Semi-Structured Questions

### General Questions

10. Do you think a standard of care would be beneficial to the field of forensic psychological assessment?

Yes, definitely. I do.

11. What standards/guidelines do you follow when completing forensic psychological evaluations?

I use the guidelines and standards that were taught to me during my training in forensic assessment and through my mentorship. I don't think there are set standards for competency evaluations.

12. What guides you to use psychological testing when conducting personal injury and/or competency evaluations? When you use testing, how do you construct the battery of tests? Do you have a fixed battery or do you customize a flexible battery?

I always give an MMPI to everyone. That might change because I rarely get one back that is valid. I use a flexible battery. I will give a cognitive screening measure if there appears to be any cognitive issues during the evaluation. If the referral question or history suggests any possible cognitive issues or a brain injury I will give cognitive measures, such as a full WAIS and give additional testing as needed. I



don't do cognitive tests unless there is a history or issue. If there is prior testing that has been completed recently, I may not do testing.

13. What are the major ethical challenges or dilemmas you face when conducting personal injury and/or competency evaluations?

I think the major ethical challenges when completing forensic evaluations are people who are working on their own or working independently that have been hired by one side and are obviously skewed. Some of the reports are pretty skewed and if they are providing an expert opinion and focusing on a subset of information that can damage our credibility as a field. If there are two experts with very different reports looking at different things, that doesn't look good.

14. How might these challenges be addressed in a standard of care?

If there was a governing body or something you would be bound to, there would be that external pressure.

15. What role do diversity factors play in forensic evaluations and how are they addressed?

Language factors and ethnicity and cultural factors. I think a lot is lost in translation. A lot of what we are dealing with is very nuanced. I don't believe my opinions are as solid when I have to use a translator. Also, some Hispanic cultures and cultures from the Caribbean have ideas and beliefs that are very religious or voodoo or Santeria. Those beliefs can sometimes appear psychotic in mental health defendants. It can be hard to tease out the quality of those beliefs. Sometimes when they have a mental illness and fixate on their religious or cultural beliefs it can difficult to tease out what is psychotic.

16. Do you assess for feigning and exaggeration? When, why, and how?

Yes. From the minute I meet them. I assess from the very beginning. In all my interviews and interactions I am assessing for how genuine they are. There is obviously a lot of secondary gain in these cases and you need to assess for malingering and exaggeration. I would do something more formal if it is called for if they may be assessing mental health psychotic symptoms or a cognitive impairment. I use collateral information and I can monitor calls in this setting.

17. What role does third party information play when conducting a competency and/or personal injury evaluation? What sources do you typically utilize?

I talk to the attorney and the prosecutor. I don't want to talk to just one side and like to speak to both on the phone. All the records. I am usually over inclusive of records

in my report. I talk to their family, especially if there is a responsibility issue and try to talk to someone who was around near the time of the event. I find out where they have been hospitalized or incarcerated and request all of their records.

### Specialized Competency Evaluation Questions

1. Describe your approach and methods to evaluate competency.

- What exactly do you do when conducting a competency evaluation? Guide me through the different phases, from the referral process to the completion of the assessment including the level of structure in interviews. Do you follow a standardized format? What are some of the core tests that you use?

I review all the information I have on hand. All the records and I call the attorney and the prosecutor. The records help identify additional collateral sources. I do the interviews. The background history interview can take one to two sessions. I get all of their background from birth until now. I think about what testing needs to be done and refer for testing or do the testing. I might do collateral calls to fill in gaps. I do a series of interviews for competency. I don't use a standardized test for competency. I use a structured interview I developed from bits and pieces from various places through my training and work. I am over inclusive with my questions. It allows me to gather more qualitative data that I may have missed through a structured test. If they are very focused on one thing or have trouble getting along with the lawyer. Instead of completing a structured test and then asking all these questions at the end, I ask them all throughout. It included all the questions that would be on a structured test, plus more questions. I ask them about the thoughts on treatment and medications and their mental illness. I write a conservative section about treatment. And then there is a lot of writing. I write the report.

2. What would a standard of care for a competency evaluation entail?

Report structuring. How to structure a report and what to include and what not to include because of legal issues. What data to include. Maybe templates or a tutorial. What should be left out of evaluations. Help the evaluators understand the specifics. Important to be clear about the ethics part. I think the ethics issues we talked about can really undermine the credibility of the professions.

3. What do you believe are the most common challenges, omissions, or errors made when psychologists complete competency evaluations?

Giving opinions not backed by data. Sometimes you read a whole report and then don't know how they reached the opinion at the end. I think that is the most egregious mistake. Or veering off the subject. Sometimes people will muddle the waters and answer either competency, responsibility or dangerousness in different

reports. They'll talk about responsibility or even just a routine psych eval in a competency report instead of focusing on the subject.

4. Do you express the ultimate opinion in your reports?

I would never say I find this person competent. That is the judge's job and everyone involved in the courts knows that. I will give my opinion and they can choose to accept it or not. I might refer to competency-related skills or issues that negatively impact their competency and I give my opinion, but it is not my job to reach the finding.

5. How would a standard of care be helpful in clarifying the "ultimate issue" issue?

I don't really see what the controversy is about. You don't find the defendant competent or not. You offer an opinion and the Court decides on it. I go further with my opinion in sanity evaluations.

6. How would a standard of care be helpful to you in conducting competency evaluations?

Yes, certainly. I think a standard of care would be helpful in providing additional standardization and guidelines for all forensic psychologists to follow. It would help you feel more confident in the product.

### Closing Questions

1. How do you define an expert?

I wouldn't consider myself an expert in say trauma, for instance. I could say I am an expert in psychology, but not other subspecialties, except for forensic psychology. I think formalized training or mentorship would help determine if you are an expert because it is a specialized skill set. I wouldn't be competent in forensic psychology if I had not received the training or experience I did. In Massachusetts you have to be designated a forensic psychologist and have shown certain skills and there is a panel that reviews the quality of reports. There is a lot of variation throughout and no standardization. I don't think you can just dabble in forensic psychology or fall into it. It is a special skill set.

2. Is there anything else you would like to add?

No.